



**HUMAN RIGHTS
ANNUAL REPORT
2019/20**

Monitoring the compliance
of the Police Service of
Northern Ireland with the
Human Rights Act 1998

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FOREWORD



I am pleased to present the Northern Ireland Policing Board's (the Board) 13th Human Rights Annual Report.

The Policing Board's Human Rights Annual Report provides an account of the performance of the PSNI in its compliance with the Human Rights Act 1998 and an overview of the monitoring work carried out during the year by the Board. With the specialist advice of the Board's appointed Human Rights Advisor, this Report highlights good policing practice and areas in which practice could be improved with specific recommendations.

The Human Rights Annual Report 2019/2020 contains 14 recommendations for PSNI including human rights training and policy, Body Worn Video, Treatment of Suspects, the Street Triage Pilots and Legacy investigations.

This Report brings transparency to issues that infringe societal rights, assists public understanding of the implementation of human rights standards in police service delivery and explains how the Board conducts its monitoring work. It helps maintain public confidence in the PSNI which is paramount in securing its legitimacy. This fundamental principle lies at the heart of the work which the Policing Board, assisted by the Human Rights Advisor, carries out on behalf of everyone in our community.

PSNI has now implemented over 200 recommendations made in the 12 previous Annual Reports relating to issues such as domestic abuse, hate crime, covert policing, children and young people, public order, complaints and discipline, use of force, stop

and search and many more. The sheer extent of the scope of work undertaken by the Policing Board and the Human Rights Advisor highlights the importance of keeping Human Rights under review as there are always new and emerging issues.

Publishing thematic reports on issues which currently impact policing has proved helpful and a range of recommendations from these types of reviews have also been implemented over the years. At the time of finalising this Report, the Board's Human Rights Advisor is progressing a thematic review of the PSNI Response to the COVID-19 pandemic.

A rights based approach to policing protects the public and officers responsible for delivering the service. The Board's oversight regime has been recognised as good practice nationally and internationally. Having a positive human rights culture in our policing service and a willingness to be held to account to the community through the Policing Board is welcome. PSNI's acceptance and implementation of recommendations made is indicative of the commitment to a human rights based approach.

As a Board, we must also keep our own work under review and we welcome feedback on this Annual Report and the human rights monitoring framework which it is based on. Views or comments can be provided to the Board at the following email address: PerformanceCommittee@nipolicingboard.gov.uk

In conclusion, I would like to record thanks to our Human Rights Advisor, John Wadham for his work in producing this Report.

Doug Garrett
Chair
Northern Ireland Policing Board

EXECUTIVE SUMMARY

The Board is under a duty to secure the maintenance of the police in Northern Ireland (s.3(1) of the Police (Northern Ireland) Act 2000) and to ensure that the police are efficient and effective (s.3(2)). In carrying out those functions, the Board has a further duty - to monitor the performance of the police in complying with the Human Rights Act 1998 (Police (Northern Ireland) Act, s.3(3)(b)(ii)). Section 57 (2)(a)(ii) of the 2000 Act also compels the Board to issue an annual report which should include the performance of the police in complying with the Human Rights Act 1998. This Human Rights Annual Report was prepared by the Policing Board's (the Board) Human Rights Advisor, John Wadham and Board officials for the reporting period 2019/20.

John Wadham was appointed as the Board's Human Rights Advisor in June 2019 and took up the post on 24 July 2019. During the period from February 2017 until December 2018 while the Board was not constituted, Board officials undertook assurance to ensure that the statutory responsibility continued and produced a Human Rights Assurance Report¹ covering the period 2017-2019. This Annual Report captures both the previous human rights assurance briefings provided by officials from April – September 2019 and includes the work of the Human Rights Advisor from October 2019 – March 2020. This publication also reviews the outstanding recommendations and issues from the Human Rights Assurance work carried out by the Board's Performance Directorate from September 2017 to September 2019.

It should also be noted that, following advice from the government on Covid-19 the Human Rights Advisor was only able to work remotely from March 2020 and this has partially restricted the monitoring work that was planned. The Covid-19 emergency in March 2020 resulted in police services throughout the UK, including in Northern Ireland, being given very significant new powers. Perhaps more powers across the UK than any time since the Second World War and arguably more than even then. Generally speaking, the public have accepted that these powers are necessary and

¹ Northern Ireland Policing Board, Human Rights Assurance Report September 2017 – August 2019, available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/human-rights-assurance-report-sept17-aug19.PDF>

appear to be complying with them. However, there have been examples of many members of the public not understanding or not accepting them and some police officers around the UK not applying the powers appropriately. Some of the problems might have been because people are confusing government statements, the provisions of the Coronavirus Act 2020 and the new Health Protection Regulations. A few weeks on from the new powers being implemented, many police services suggested that they need to use these powers more robustly to protect the public. The PSNI at the end of March took the decision to temporarily issue Spit and Bite Guards to some officers to protect them and the Board's Independent Custody Visiting scheme had to be suspended. In May 2020 the Board decided therefore to initiate a human rights review of the PSNI's response to the Covid-19 emergency and this will be published in early October 2020.

The Human Rights Advisor is appointed to provide the Board with independent advice and expertise on PSNI's compliance with the Human Rights Act 1998. The PSNI has provided unlimited access to all of its documents and materials and to observe any police procedures or actions the Advisor has requested. The Human Rights Advisor has Developed Vetted security clearance which enables him to delve more deeply into policing processes, particularly sensitive and covert processes that Members of the Board cannot review themselves. Through written reports, recommendations and in other ways, the Advisor reassures the full Board that all parts of the PSNI's operations are subject to the robust accountability required by the Police (Northern Ireland) Act 2000.

As a public authority the PSNI has the primary legal responsibility for practical compliance with human rights (section 6 of the Human Rights Act 1998). The legal advice and compliance function lays with and must be embedded within the PSNI itself. The PSNI is required to assess its own policies and operations for their compliance with human rights and make any necessary adjustments.

The Board, as the mechanism established for police accountability for Northern Ireland, continues, however, to monitor the PSNI's compliance with the Human Rights Act 1998, the European Convention on Human Rights (ECHR) and other relevant human rights instruments. Other human rights instruments will be used to supplement

that jurisprudence where necessary (a process that the European Court of Human Rights itself recognises as legitimate).

As to the level of scrutiny, the monitoring process keeps firmly in mind the key principle that emerges from human rights jurisprudence, namely that the protection of human rights must be 'practical and effective'. The monitoring process will therefore continue to examine the PSNI's compliance with its obligations under the Human Rights Act 1998 at all levels. This will include close scrutiny of the mechanisms in place which are intended to ensure that policy (both at the drafting and the implementation stages), training (from preparation through to implementation, awareness and appraisal), investigations and operations (from planning through to implementation) are effective in ensuring human rights compliance. It will also attempt to assess the impact of human rights considerations on decision making on the ground, allowing an input from the communities that are policed by the PSNI.

The monitoring carried out by the Board recognises that other processes are already in place which, in one way or another, measure the performance of the PSNI (particularly those dealing specifically with human rights). The Board is required to have regard to the need to co-ordinate its activities with those of other statutory bodies, and to co-operate with such authorities (s.3 (4) (d) of the Police (Northern Ireland) Act 2000). It is not intended that, in carrying out its functions under s.3 (3) (b) (ii) of the Police (Northern Ireland) Act 2000, the Board should replicate the work of these bodies. Instead the Board will obtain and review the reports, research and recommendations of these bodies where they touch on PSNI human rights issues and, where the Board's Human Rights Advisor considers that a legitimate issue relating to the PSNI's compliance with the Human Rights Act 1998 arises, assess the PSNI's response to them.

The Board recognises that there is an overlap between the statutory duty of the PSNI to have due regard to the need to promote equality of opportunity under s.75 of the Northern Ireland Act 1998 and the non-discrimination provisions of the ECHR.

The PSNI has had the principles of human rights embedded into its structure for nearly twenty years and senior officers have a great deal of technical knowledge of how to

ensure human rights are taken into account in practical policing. The Board's statutory role in holding the PSNI to account in relation to human rights compliance is also an important example to others.

However, there are other factors which sometimes impact the practical implementation of human rights. These obviously include the current terrorist threats, including all too frequent attempts to kill and injure officers and the delay in the establishment of the Historic Investigations Unit, leaving the PSNI to carry out investigations, which continues to raise issues of its independence and the inevitable consequential litigation concerning Article 2.

Yet, there is also good news. The excellent pilot operation between the PSNI and the Department of Health to try to keep people with mental health and addiction issues out of police stations and away from the criminal justice system is to be commended. More resources are needed to ensure that this can be rolled out across the whole of Northern Ireland. The training of officers both at the first stage of their career and later training embedding human rights is a real example to other police services, but recent audits and academic research by Richard Martin and John Topping shows that there is still more to do. The increasing use of Body Worn Video by officers is having positive effects in the investigations of domestic violence, as well as reducing the number of police complaints, and reducing conflicts when police officers use some of their more controversial stop and search powers.

There are, of course, still many problematic issues for human rights in policing in Northern Ireland. The outcomes from all the various stop and search powers are a concern – at least in terms of effectiveness – and particularly for the “no reasonable suspicion required” Justice and Security Act (JSA) power:

‘Of the 5,654 uses of this power, no further action was taken in 96% of cases (5,450); a report to the PPS was made in 2% of cases (89); an arrest was made in 2% of cases (86); a community resolution notice was issued in 1% of cases (28) and a Penalty Notice for Disorder was issued in one case.’²

² Para. 7.27, Report of the Independent Reviewer, Justice and Security (Northern Ireland) Act 2007, Twelfth Report, 1st August 2018 – 31st July 2019, David Seymour CB April 2020

Litigation is, however, driving some positive changes and as a result of the Ramsey judgment on the JSA stop and search power there will need to be more positive changes next year. As a result, there will be new guidance on how police officers should record the basis for their stops and searches using the JSA powers and how they should ascertain and record the community background of those subject to this power.

Public order policing is likely to continue to be controversial but, it would appear from Richard Martin's observations and the specific assessment of the event in August 2019 involving the Apprentice Boys of Derry, that human rights principles help the PSNI to make difficult decisions. Such decisions may not be supported by all communities but appear to be grounded in human rights. More transparency around the nature of the general strategy for the events every parading season would be helpful.

At the end of March 2020 the PSNI were given responsibility and unprecedented new powers to keep the public safe from Covid-19. The lockdown powers were not as clear as they could have been – but that is an indictment of the legislators and politicians and not the police officers that were asked to enforce them.

There has not been as much monitoring by the Human Rights Advisor of the covert policing arrangements and procedures this year as there should have been and it is hoped that this will be addressed next year.³

Going forward the Board and its Human Rights Advisor would like to see an increased emphasis on human rights compliance in the PSNI. One of the ways of achieving this would be to ensure that the PSNI more fully and clearly embeds human rights into all of internal policies and instructions to officers. This will require considerable work and will need to ensure that the PSNI's customers – victims of crimes, as well as those

³ The new Human Rights Advisor only started in August 2019 and had to restrict his activities in the middle of March as a result of the Covid-19 emergency.

subject to its powers – and understand its policies and actions and how those align with human rights principles and practices. It is important that the PSNI itself is seen as an expert on policing and human rights and the role of the board is to ensure that this is done accurately, assisting where it can.

RECOMMENDATIONS

Recommendation 1 – Training

PSNI should i) consider Dr. Richard Martin's research on the training of officers; ii) work with the PSNI Human Rights Training Advisor to develop plans for improving the training; and iii) report to the Policing Board on the implementation of those plans.

Recommendation 2 – Policy

The PSNI should develop and publish a plan and timetable to ensure that all of its policies are published and, where relevant, they set out the human rights issues involved in sufficient detail to allow a member of the public to be reassured that proper consideration has been given to them. It is accepted that there may be some policies that contain sensitive issues and in those cases the Policing Board or its Human Rights Advisor should be consulted on what can or cannot be disclosed to the public.

Recommendation 3 – Operations

The Body Worn Video guidance should be expanded to include more information about the human rights issues involved in the use of Body Worn Video (especially in relation to privacy).

Recommendation 4 – Operations

The street triage pilots, subject to a positive evaluation, should be expanded to the whole of Northern Ireland and the PSNI should seek support from the Department of Health to achieve this.

Recommendation 5 – Operations

Pending the establishment of the Historical Investigations Unit the PSNI should put in place procedures that comply with the Article 2 requirements for legacy investigations as set out in the Court of Appeal case of McQuillan. At a minimum this should include consideration of the appointment of Senior Investigating Officers from outside the PSNI to lead investigations where practical independence is in question.

Recommendation 6 – Operations

The PSNI should report to the Policing Board on implementing the recommendations made in the CJINI review of the methods used to disclose information in respect of historic cases to the office of the Police Ombudsman for Northern Ireland.

Recommendation 7 – Operations

Within 6 months of the publication of this Human Rights Annual Report, the PSNI should publish the criteria used by chief officers to decide which stop and search tools officers should use, ensure that they are human rights compliant and that they will be effective. Thereafter, the PSNI should analyse the activity after the event to determine whether the increase/decrease in deployments had an impact on crime levels or other objectives. The PSNI should provide a written briefing to the Performance Committee on the findings and on the steps taken, or to be taken, within 12 months of the publication of this Human Rights Annual Report.

Recommendation 8 – Operations

The PSNI should draft a Service Instruction, or add to its current draft Service Instruction, on Stop and Search which sets out how police officers should record the basis for their stops and searches using Terrorism Act 2000 and Justice and Security (Northern Ireland) Act 2007 powers and how they should ascertain and record the community background of those subject to this power.

Recommendation 9 – Operations

PSNI should set out what indicators they use to assess the effectiveness of their use of each of the stop and search powers compared with other kinds of police officer deployments.

Recommendation 10 – Public Order

The PSNI should share in April each year its overall strategy for dealing with the events over the upcoming summer with the Policing Board.

Recommendation 11 – Use of Force

The Policing Board will work with the PSNI over the next year to seek to make public the use of force statistics by gender, age, ethnic minority and disability etc. Subject to the actions taken by the PSNI to respond to the stop and search case of Ramsey, the

Policing Board will discuss with the PSNI the production of statistics on the use of force and community background status of those subjected to this use of force. PSNI should report to the Board on how use of force is monitored and the reasons for the increases in the number of times force has been used.

Recommendation 12 – Victims

As a result of the proposed new legislation on domestic violence in respect of domestic abuse, harassment, stalking and coercive control, which is to be expected to be in place this year, it is now recommended that PSNI should provide the Board with its draft written policy and guidance on the use of the new powers and the proposed training plan for officers.

Recommendation 13 – Treatment of Suspects

Jonathan Hall QC in his latest report raises some questions about the PSNI's use of the TACT powers at ports (Schedule 7) and a need to look at the safeguards and training that is in place (Para 9.86). He also says the ethnic minority data should be published by PSNI as a matter of course (Para 9.87) and community background information should be requested and published (Para 9.92). The Policing Board recommends that the PSNI reviews these issues and reports to the Policing Board.

Recommendation 14 – Children and Young People

In the previous Human Rights Annual Report the following recommendation was made: *PSNI should analyse its use in 2016/17 of police detention for children. That analysis should consider a random sample of cases (not less than 20%) in which children were detained. The analysis should include in particular whether alternative options were considered. If alternatives were considered but unavailable the PSNI should identify the reason(s). PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report.*

This recommendation was not completed because the PSNI did not have the capability to carry this out. However, the PSNI is part of a wider working group which has been considering alternatives to detention. The PSNI should report to the Board on the outcomes from this work and its actions following any recommendations.

CHAPTER 1 - TRAINING

The Patten Report⁴ recognised that “training was one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel” and specifically recommended training in the “fundamental principles and standards of human rights and the practical implications for policing” (para.4.9). In monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Board identified training as a key area within the framework since its development in 2003. Since then, the Human Rights Annual Reports and Thematic Reviews have considered how the PSNI has striven to give full effect to the Patten recommendation and subsequent recommendations made by the Board’s Human Rights Advisors.

During 2016 a review of the PSNI Police College was commissioned by the Chief Constable, at the request of the Board, which made 34 recommendations in total, concluding that while the Student Officer Training Programme (SOTP) was “rightly demanding” it placed “significant and unnecessary strain on students and staff”.⁵ In terms of its pertinence to the PSNI’s human rights obligations, the Review highlighted concerning and “overly militaristic” discipline practices and a negative “all for one” training culture. The Human Rights Annual Report 2016/17 examined this in more detail⁶, including analysis on the PSNI’s acceptance and response to the recommendations. However, it also explored how the PSNI embraced the review and took meaningful steps to overhaul and fully modernise PSNI training so that recruits are able to learn in a supportive and interactive training environment, where the vision, values and ethos are at its core.

During 2019/20 Board officials continued to engage regularly with the College to ensure that the positive outworkings of the review have been maintained. Observations of training throughout the College were conducted looking at how lessons provided sufficient integration of human rights considerations.

⁴ Independent Commission on Policing in Northern Ireland, A New Beginning: Policing in Northern Ireland (“the Patten Report”), available at: <https://cain.ulster.ac.uk/issues/police/patten/patten99.pdf>

⁵ Police Scotland, The Police College Review Report, Version 1.2 26th October 2016, available at: <https://www.psni.police.uk/globalassets/news-and-appeals/latest-news/news-stories/2016/november/college-report/police-college-review-final-version-1.2---official-marking.pdf>

⁶ Northern Ireland Policing Board, Human Rights Annual Report 2016/17, available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/human-rights-annual-report201617.PDF>

During 2019/20 it is evident that the PSNI Human Rights Training Advisor has built capacity and understanding of human rights across a range of training. The Training Advisor conducted a number of human rights training audits designed to assess if the course documentation is in line with the required standards governed by national human rights law, the human rights treaties and mechanisms of the Council of Europe, in particular the ECHR and its protocols, the European Convention on the Prevention of Torture and Degrading Treatment, and other applicable international instruments, and to identify areas for development. The audits took the form of a snapshot review of lesson plans, documents, marking and assessment schemes and discussions with police trainers involved in the assessment and delivery of lessons and attendance at a number of courses across a range of areas. Audits were conducted in the following areas: Student Officer Training Programme; Combined Operational Training specialism; Investigative Training; and Custody Training. These are discussed in more detail below.

Student Officer Training Programme

The Student Officer Training Program (SOTP) prepares student officers for entry as warranted police officers through a 23-week training programme which, on successful completion, provides the officer with an Advanced Diploma in Policing. Learning within the SOTP is focused upon the application of police powers in accordance with relevant legislation, codes of practice and multi-agency operating procedures. Learning is delivered within six distinct topic areas, namely: Foundations of Policing, Criminal Justice System, Investigative Skills, Road Policing, Public Protection and Safety, and Officer Safety and Wellbeing. Within these areas, students are trained on subjects ranging from powers of arrest, entry and search; understanding of criminal offences including common road policing offences; the management of those offences and incidents which cause harm and impact on the most vulnerable in society and the application of use of force including firearms and Personal Safety Protection. As a consequence of this, human rights considerations are required to be understood and applied throughout the programme in order to prepare student and probationer officers for the demands of operational policing.

In conducting the human rights audit of this programme, the PSNI Human Training Advisor considered lessons and material in child protection, powers of entry and search, domestic abuse, sexual offences, adult safeguarding & mental health, hate crime, human rights, cybercrime and arrests & necessity criteria. The audit found that improvements suggested by the Training Advisor have been implemented, in particular, it is evident there is an improved focus on communication skills as a means to mitigate use of force and develop rapport with the public, assisting the student officer to develop communication skills. The College training staff have a good understanding of their human rights obligations and seek to provide appropriate and timely prompts to student officers in an effort to model good practice and strive for human rights compliance in areas ranging from use of force, stop and search encounters and dealing with vulnerability. The integration of scenario-based learning and practical developmental assessments⁷ encourages student officers to scrutinise their theoretical understanding of human rights law in relation to the situations and decisions they will routinely face. In doing so, the programme demonstrates a focus on police accountability and the need to provide robust justifications for each decision made. The audit makes two recommendations which the Board endorses: firstly, that the SOTP should consider introducing human rights screening for courses; and secondly, that new Foundation Trainers within Police College should undergo 'Human Rights for Trainers' within their first year of training at the College.

Combined Operational Training (COT)

This audit analysed use of force, public order and firearms. The use of force by police raises potential human rights issues relating to right to life - where force used results in a fatality or could have been anticipated to do so (Article 2), right to freedom from torture and degrading treatment (Article 3) and right to privacy (Article 8) particularly in the context of allegations of excessive force in restoring public order or in the course of the entry and search of a private dwelling. The judgements surrounding the decision to use force requires officers to have an awareness of the extent of the legal powers by which they may lawfully use force and the context in which those powers can be

⁷ Rather than a formal pass/fail practical, developmental assessments are used throughout the course requiring students to display their practical understanding and ability to apply what they have been taught across scenarios including search, arrest, custody etc. Rather than receiving a grade, students are encouraged to self-reflect on their decision making and provided with feedback from the trainers.

exercised in a lawful, necessary, accountable and proportionate manner. The use of force is covered under the PSNI Manual of Policy, Procedure and Guidance of Conflict Management, which states, that “in carrying out their duties, police officers shall, as far as possible, apply non-violent means before resorting to the use of force. The use of force can only be resorted to, if other means remain ineffective and there is no realistic promise of achieving the lawful objective without exposing police, or anyone else whom it is their duty to protect, to a real risk of harm or injury.” Public order maintenance is an important police function that can impinge overtly and directly on the public rights and freedoms of individuals and groups, for example, freedom of expression (Article 10) and freedom of assembly and association (Article 11). The goal of firearms training is to ensure officers are safe and competent in the use, tactics and handling of firearms. Firearms training is governed by strict national standards which place an emphasis on the use and application of the National Decision Model (NDM)⁸ and communication skills in order to resolve situations without recourse to the lawful use of force, and, to equip officers to understand when force (including the use of less lethal technologies), and particularly the use of lethal force, may be necessary and proportionate.

The audit makes three recommendations which the Board endorses: firstly, that COT training and its associated disciplines, consider introducing human rights screening for courses; secondly, that COT trainers should consider the inclusion of Adverse Childhood Experience (ACE) input for TSG teams in relation to identifying and communicating with children in crisis; and thirdly, that COT trainers should review their search courses in light of the implications of Ramsey v Chief Constable⁹ judgment in respect of the Justice & Security Act inputs.

Investigative Training

Investigative practices undertaken by PSNI involve interaction and engagement with the Human Rights Act, primarily, in relation to compliance with the right to life (Article

⁸ National Decision Making Model is a police framework that is used to make the decision making process easier and more consistent across police services and all ranks.

⁹ Ramsey v Chief Constable, available at: <https://judiciaryni.uk/sites/judiciary/files/decisions/Ramsey%27s%20%28Steven%29%20Application%20%28No.2%29.pdf>

2), the right to freedom from torture and degrading treatment (Article 3), the right to a fair trial (Article 6) and the right to privacy (Article 8). The audit considered the content to assess the suitability of training materials to ensure that officers are equipped to ensure human rights compliant treatment of witnesses and victims within conditions of police interviews and the suitability of its content to educate and equip officers to understand the complex challenges facing victims of modern slavery and human trafficking.

The audit makes two recommendations which the Board endorses: firstly, that the training should consider introducing human rights screening for courses; and secondly where PSNI accept the recommendations of the Gillen Report¹⁰ relevant assistance from Human Rights Training Advisor should be availed of in relation to guidance on relevant human rights standards.

Custody

It is essential that the administration, authorisation and use of police custody complies with its human rights obligations in relation to the treatment of persons arrested, detained and departing from police custody. Use of police custody will necessarily involve interaction and engagement with the Human Rights Act, primarily, in relation to compliance with the right to life (Article 2), the right to freedom from torture and degrading treatment (Article 3), the right to liberty and security (Article 5) and the right to privacy (Article 8). Custody training is delivered in line with PSNI policy and involves engagement and/or awareness building with supporting custody services including the role of the Office of the Police Ombudsman, Independent Custody Visitors, translation and interpretation services; Appropriate Adults Scheme; Force Medical Officer interaction and the use of registered intermediaries. Custody staff receive mandatory personal safety training, training in first aid and the use of oxygen and defibrillator. A core focus of custody training content relates to the use of risk assessment and risk mitigation in an effort to reduce incidences of deaths in custody and reducing Article 2 risks.

¹⁰ This is explored more in chapter 8.

During the audit, the content was reviewed to assess the suitability of police custody training materials to ensure that Custody Officers and Civilian Detention Officers are equipped to ensure human rights compliant treatment of detainees within conditions of police detention. Training staff, approached during the review period, had a good understanding of their human rights obligations and sought to provide appropriate and timely prompts to learners in an effort to model good practice and strive for human rights compliance in areas ranging from use of force, risk assessment, suicide awareness and dealing with vulnerability.

The audit makes three recommendations which the Board endorses: firstly, that custody training should consider introducing human rights screening for courses; secondly, that new custody trainers attend informal/formal updates on continuous professional development on best practice in integrating human rights within training materials to complement existing trainer skills; and lastly, that custody training should continue to keep under review training relating to vulnerability, mental health and restraint and children & young people and ensure that such elements remain in line with national guidelines/best practice.

Public Order Command

Dr. Richard Martin conducted a large research report on PSNI exploring how officers of varying ranks understand, interpret and apply human rights in their daily work.¹¹ On Public Order Command training specifically, Martin commented;

“Certified public order Commanders must pass specialist command courses based on the College of Policing’s standardised curriculum and assessment. In the wake of critical findings by HMCIC, efforts have been made to remedy the knowledge deficit identified amongst Commanders in England and Wales. Key learning outcomes for courses now include consideration of powers and policies relating to human rights, alongside an understanding of the human rights framework.” “In most instances, trainers managed to summarise the law accurately. The ambit of the right to peaceful protest (discussed below) –

¹¹ See A ‘Culture of Justification’? Police Interpretation and Application of the Human Rights Act 1998, in *The Frontiers of Public Law*, J.Varubas and S.Stark (eds.) Hart, 2020 and *Ethno-Political Tenors of Human Rights: The Case of the Northern Irish Policing Board*, *Modern Law Review*, 2019, Vol 83, Issue 1.

comprised of clear core principles – proved straightforward to convey to trainee Commanders...”

And

“For more technical aspects of the law, like the formula to be applied for qualified rights, trainers seemed less comfortable and relied heavily on the College of Policing curriculum. On the concept of proportionality, for instance, trainers explained the need for a link between the measures and the legitimate aim, reading out the considerations verbatim from the public order manual. “The trainers turned to the expertise of the PSNI’s human rights lawyer, showing the trainees a copy of the lawyer’s email, which identified the factors police ought to consider in light of the House of Lord’s discussion of ‘imminence’ (e.g. whether it was the last opportunity police had to take preventative action). Officers were told to write down the lawyer’s number: ‘If you have any questions phone him and he’ll get back to you, he’s been very supportive in putting together the training.”

“More critically, in the absence of a closer analysis of the substantive scope of human rights, the aspiring Commanders seemed to be left relying on a ‘gut feeling’ of the ambit of the Convention.”

Recommendation 1

PSNI should (i) consider Dr. Richard Martin’s research on the training of officers; (ii) work with the PSNI Human Rights Training Advisor to develop plans for improving the training; and (iii) report to the Policing Board on the implementation of those plans.

Training will continue to be a focus of the new framework for monitoring PSNI’s compliance with the Human Rights Act 1998. The Board is considering the most appropriate approach to this by conducting random and unannounced checks of human rights training for (i) student officers, (ii) other officers and (iii) policy makers both within the Police College and within districts. The Advisor will also evaluate the PSNI’s own arrangements for monitoring the delivery of human rights training and keep itself informed of the work of the PSNI Human Rights Training Advisor and District Policing Command Training Committee.

CHAPTER 2 - POLICY

PSNI policy governs the conduct of police officers and police staff and sets out the framework within which decisions may be made. PSNI policy is primarily contained within Service Policy documents, which PSNI describes as being “principles to govern the organisation”, and Service Instruction documents which are defined as “practical instructions for service delivery to inform decision making in line with Service Policy.” Combined, these policy documents should inform every officer or staff member what principles they must embrace, what procedure they must follow and what standards are expected of them. Crucially for the Board, they provide a measure by which police practice can be monitored and assessed. As part of the human rights monitoring framework, the Board evaluates the extent to which particular police policies ensure operational compliance with human rights standards.

In monitoring the performance of the PSNI in complying with the Human Rights Act 1998 during 2019/20, the Human Rights Advisor selected particular police policies and evaluated the extent to which they ensured operational compliance with human rights.

As reported in previous Human Rights Annual Reports, the Board has consistently advocated for the publication of all PSNI policy on the ‘Corporate Policy’ section of its website. For all police action to be human rights compliant it must have a lawful basis which includes the requirement that it is accessible to those whom the police interact with. Unfortunately, the PSNI has more to do to promote a proper level of transparency for its policies.

All police services across the United Kingdom are expected to publish their written policies, protocols and procedures.¹² It is accepted that some documents should not be published, for example, if publication is likely to impact adversely upon operational activity or if the information is classified. However, even if a policy document contains classified information which cannot be published, a summary of the policy with the restricted information redacted from it can, and should, be published. These

¹² The Information Commissioner’s Office has produced guidance for police services on the types of information that they should publish: https://ico.org.uk/media/for-organisations/documents/1280/definition_document_for_police_forces.pdf

documents should be published in formats that enable persons with disabilities equal access to the information.¹³

One important change in approach this year has been slight re-balancing of emphasis on human rights. The Board requested the PSNI to ensure that all of its policies and procedures set out clearly any human rights issues that are relevant and to publish those policies and procedures. It is expected, however, that this process will take some time to complete. The PSNI was also asked to undertake a similar approach to new and, particularly, controversial operational and policy matters. It is understood that in some cases the fine detail of its human rights assessments may not be able to be published for security and other reasons. In such cases the Board's Human Rights Advisor will review the more detailed material and, where possible, report to and reassure the Board on compliance.

Recommendation 2

The PSNI should develop and publish a plan and timetable to ensure that all of its policies are published and, where relevant, they set out the human rights issues involved in sufficient detail to allow a member of the public to be reassured that proper consideration has been given to them. It is accepted that there may be some policies that contain sensitive issues and in those cases the Policing Board or its Human Rights Advisor should be consulted on what can or cannot be disclosed to the public.

BIOMETRIC RETENTION

The Grand Chamber of the European Court of Human Rights (ECtHR) decided, in the 2008, the case of *S and Marper v UK*, challenging the blanket policy of retaining indefinitely the DNA samples, profiles and fingerprints (referred to collectively as 'biometric material') of all people who have been arrested but not convicted of an offence. The Court found that this policy did not comply with the right to respect for

¹³ As required by for example the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), articles 2, 9 and 21

private and family life (Article 8). This case and the subsequent implications for the PSNI have been discussed at length in previous Human Rights Annual Reports.

In response to the Marper judgment the Northern Ireland Assembly introduced a new legislative framework for the retention and destruction of biometric material - the Criminal Justice Act (Northern Ireland) 2013. There was, however, a delay in the new framework coming into operation, but as an interim measure PSNI established a Biometric Retention/Disposal Ratification Committee which met regularly to discuss applications for individuals requesting that their biometric materials be destroyed and relevant records and databases amended to reflect this. The Board's Human Rights Advisor previously attended the Committee meetings in an observer capacity and reported in the Human Rights Annual Report 2016/17 that the Committee 'makes decisions insofar as possible within the spirit of the forthcoming framework under the 2013 Act'.

In January 2019 the Northern Ireland Human Rights Commission reported that it had settled a case taken against PSNI on DNA retention. As a result the PSNI agreed to produce a formal public policy on the retention of biometric data within 12 months. The policy was designed to take into account human rights and to provide guidance to the public on how they can find out if their DNA or fingerprints have been retained, why this is so, and how they can challenge the decision if necessary. It was agreed that the policy would be made available to members of the public on the PSNI website.

In late 2019 the PSNI produced a draft Service Instruction and, separately, Guidance Notes for applicants wanting to request deletion of their records. Following the litigation on behalf of a person who sought deletion of his records, the Northern Ireland Human Rights Commission held a round-table in October 2019 to discuss these draft documents and the Board's Human Rights Advisor attended.

Draft Policy

In the continued absence of legislation, the PSNI's proposal was that its new Service Instruction would come into force in April 2020 and would be modelled on the provisions of the Criminal Justice (Northern Ireland) Act 2013 (the CJA), although this Act has still not yet come into force and is not likely to come into force in the near

future. The first draft of the Service Instruction was a little complicated and difficult to understand. However, in summary it would mean that a person's fingerprints, DNA profile and/or photograph held by the PSNI will be retained¹⁴ in the following circumstances:

- Indefinitely if having ever been convicted of a recordable offence (most criminal offences are "recordable");
- Three years (with the possibility of an extension to five years) if charged but not convicted of a more serious offence (a "qualifying offence"); and
- Currently the PSNI can and do make applications to the UK's Biometric Commissioner to extend the period of retention – a "National Security Determination" (applies to offences under the Terrorism Act only)

Despite these proposed rules, the PSNI was to have a discretion to delete the biometric data of a person and the draft Service Instruction suggested that this might happen in the following types of circumstances: if the material was unlawfully obtained; was based on mistaken identity or following an unlawful arrest; the recorded crime did not, in fact, occur; or was based on a false allegation. However, the possibility of deletion was only to be available if the person applying for deletion had no previous recordable convictions.¹⁵

The draft Service Instruction also set out the PSNI's discretion to retain the biometric data beyond the period set out in the general rules "to balance the need to safeguard the freedom and human rights of those from whom the biometrics were taken against its obligations to keep the public safe and detect and prevent crime".¹⁶ At the time this draft Service Instruction came into force, any records that the PSNI currently holds that are not being held in compliance with this policy were due to be automatically deleted. At a meeting with the Northern Ireland Human Rights Commissioner in October 2019, PSNI reported that the impact of the proposed approach would mean around 80,000 of the approximately 240,000 individuals fingerprints held on current

¹⁴ There are different rules for juveniles.

¹⁵ This follows national guideline observed by all England and Wales forces and governed through ACRO Criminal Records Office.

¹⁶ Draft PSNI Biometric Retention Service Instruction v.0.10 (Jan 2020) [NOT PUBLISHED]

databases would be removed. In addition, a significant number of the around 180,000 individuals who have DNA files held would also be destroyed.

However, in accordance with proposals from the NIO, the PSNI intended to take a digital and hard copy “snapshot” of the undeleted fingerprints and DNA databases and pass this over to the proposed Historical Investigations Unit (HIU).¹⁷ The plan being, that separate legislation would restrict access to this snapshot, making it only available to the proposed HIU’s investigations.¹⁸

Draft Guidance for Early Deletion Requests

This draft Guidance is long and detailed and there are, unfortunately, few references to the, obviously relevant and detailed, human rights principles. The absence of clarity on how the decisions will be made will increase the likelihood of challenges based on human rights and on the basis of ordinary public law principles.

Human Rights Issues

The draft Service Instruction and draft Guidance have, however, been driven by the positive desire to make the biometric retention regime more human rights compliant and, substantially, to reduce the numbers of people who have their data retained. However, although there is one reference to human rights in the Service Instruction, the much more nuanced and sophisticated analysis by the ECtHR is ignored and missing. In addition, the key human rights principles are not set out in a way that might be helpful for the PSNI in exercising its proposed discretion to delete some individual biometric data following a request.

The judgment also raised a separate issue about the proposals regarding the absence of a legislative basis for them – obviously not something that the PSNI itself can resolve. The rule of law is at the heart of the ECHR. No interference with a right protected under the ECHR is permissible unless the citizen is able to ascertain the legal basis for the interference. In the absence of such detailed authorisation by the law, any interference, however justified, will violate the Convention. In addition to

¹⁷ This was intended to mitigate the risk posed to historical enquiries by the deletion of material as a result of CJA commencement.

¹⁸ The Northern Ireland (Stormont House Agreement) Bill.

being formally prescribed by law, the law itself must fulfil the substantive requirement that it have the appropriate 'qualities' to make it compatible with the rule of law.¹⁹ The accessibility rule is intended to counter arbitrary power, by providing that a restriction cannot be justified, even if it is authorised in domestic law, unless the applicable law is published in a form accessible to those likely to be affected by it. Internal guidelines from government departments or agencies may likely not fulfil the requirements, even if they are published or their content is made known.²⁰

Therefore, the Policing Board welcomes the launch of a consultation led by the Department of Justice on proposals to amend the legislation governing the retention of DNA and fingerprints in Northern Ireland. It is a critical step towards ensuring that the Northern Ireland develops legislative provisions capable of balancing the need to keep people safe with protecting individual rights in respect of both Article 2 and Article 8 considerations where persons have been convicted. The Board submitted a response to the consultation which closes on 28th August 2020. Thereafter the Board look forward to engaging with the Department, the Chief Constable and the Northern Ireland Human Rights Commission regarding revisions to PSNI's policy and practices on biometric retention.

Gaughran v UK

In February 2019 the ECtHR gave its judgment in a case challenging the retention policies of the PSNI (and of police services across the UK). The applicant, Gaughran, in the case was convicted of driving with excess alcohol and his fingerprints, a non-intimate (mouth swab) sample of DNA (subsequently producing a digital DNA profile) and a photograph were all taken and retained. He had one previous conviction from 1990, when he was seventeen, for 'disorderly behaviour' for which he was fined twenty-five pounds. The Court decided that the indefinite retention by the police of DNA profiles, fingerprints and photographs of people convicted of minor offences and, in the absence of any real review of their retention, is disproportionate and, as a result, a violation of Article 8(2). The previous judgment of the Grand Chamber in *S and Marper v UK* (2008) was only concerned with retention of such materials of people

¹⁹ See *Kopp v Sweden* (1999).

²⁰ *Govell v UK* (1999).

without convictions and this new judgment extends the protection provided by Article 8 even further.

The Court was particularly helpful in its judgment in giving guidance as to how a compliant system in the UK might be structured in the future.²¹ The keys to lawful retention appear to be:

- To take account of the domestic rules on the threshold for convictions being “spent”;
- To ensure that the new regime takes account of the seriousness of the offence and any continuing need to retain the biometric material for policing and criminal reasons;²²
- A real process of review to allow individuals to seek deletion of their data, including taking into account possible changes in their personality (and presumably the likelihood of committing further offences);
- Taking into account the age of the person when he or she was convicted and the length of time between the offence and the end of retention period; and
- Noting that the new separate regime for the deletion of photographs in the UK allows deletion after six years for people convicted of less serious recordable offences.

Following this judgment, PSNI’s proposed policy will now have to be radically reconsidered. This will understandably have to be led by the Department’s consultation which proposes to introduce new provisions to the CJA (NI) 2013 to address the issues raised by the ECtHR. PSNI have expressed concerns that if they were to unilaterally interpret the Gaughran judgment without legislation already in place, it could lead to inconsistency and open them up to legal challenge. Therefore, PSNI have advised they intend to suspend publication of the Service Instruction until there is clarity from Department on the legislative solution. In light of this, and that the Gaughran case will require changes to the regimes elsewhere in the UK, it is likely that there will now be further considerable delays.

²¹ See paras. 94 to 96.

²² It might be argued that retaining biometric data is of no help in dealing with offenders who drink and drive.

In the Gaughran case the UK government made a particular submission in relation to the need to keep biometric data to enable the authorities to use that data to investigate the significant numbers of deaths during the Troubles that have not yet been properly investigated.²³ As set out above, the intention was to take a “snapshot” of the complete database before any deletions occur, (the deletions necessary as a result of S and Marper) but to then restrict access to this snapshot to those investigating these deaths from the past. The UK has continuing investigatory obligations in these so-called McKerr group of cases.²⁴ In those cases the Court found violations of the investigatory duty under Article 2 and these cases are still subject to the supervision of the Committee of Ministers.²⁵ However, this particular plea to retain the “snapshot” was rejected in *Gaughran v UK*, albeit that the Court accepted that it was not for them to decide this point, but stating the principle that:

“... in the context of unlawful killings the Court has underlined that the police must discharge their duties in a manner which is compatible with the rights and freedoms of other individuals. Indeed, without respect for the requisite proportionality vis-à-vis the legitimate aims assigned to such mechanisms, their advantages would be outweighed by the serious breaches which they would cause to the rights and freedoms which States must guarantee under the Convention to persons under their jurisdiction.”²⁶

In the Policing Board’s submission to the Department’s consultation this issue will be highlighted. It is hoped that due consideration is given to the fact that the PSNI may not have legal basis for retaining ‘snapshot’ material and that ECtHR case law suggests that Article 2 justifications for police investigation may not necessarily take precedence over the other rights and freedoms of individuals guaranteed under the Convention. The Policing Board welcomes further consultation on how the Department, in conjunction with the Northern Ireland Office intends to address this issue.

²³ See Schedule 8 of the Draft Northern Ireland (Stormont House Agreement) Bill

²⁴ *McKerr v UK* (2001).

²⁵ See the Department for the Execution of Judgments of the European Court of Human Rights, UK Country report on these cases, [https://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["004-2202"\]}](https://hudoc.exec.coe.int/eng#{)

²⁶ Para. 93 and see *Osman v UK* (1998).

CHAPTER 3 – OPERATIONS

Over the last year the Board has considered the working arrangements put in place by the PSNI to ensure that its actual practice is human rights compliant and that any guidance on human rights is followed. This includes an examination of the extent to which officers seek and obtain specialist human rights advice where necessary.

The Chief Constable is responsible for making operational decisions. The Board has no power to direct him on how to conduct an operation. However the Board can, and must, hold the Chief Constable to account for operational decisions of the PSNI after they have been taken. The Human Rights Advisor conducted after-the-event paper audit of some operations and examined any other matters brought to their attention during the monitoring exercise.²⁷

SPIT AND BITE GUARDS

Spit and bite guards are devices intended to cover the mouth, face and head of a restrained person in order to prevent them spitting at or biting others. The Human Rights Annual Report 2016/17 contained two recommendations in relation to the use of spit and bite guards by PSNI, as outlined below:

In the event that the PSNI considers introducing spit guards or guards for use by officers it should first report to the Performance Committee outlining the need and the capability gap to be filled; whether there is potential for death or injury; a tactical and medical needs assessment; and an equality impact assessment.²⁸

In the event that the PSNI intends to issue spit guards or guards to officers it should report to the Performance Committee on the policy guidance in place; training developed (for all officers and civilian detention officers); the monitoring

²⁷ It should be noted Board approval is required in relation to spend which is deemed to be novel and contentious.

²⁸ Recommendation 4, *Human Rights Annual Report 2016/17*

framework for the use of guards; and the commitment to report on the use of guards to the Board by the electronic use of force monitoring form.²⁹

During the autumn of 2019, there was a substantial debate between the Board and PSNI about whether these guards should now be issued to PSNI officers. The PSNI was in the process of responding to the concerns raised by the Board and was due to produce draft Guidance to officers on when and how spit guards would be used. However, the spread of Covid-19 in February and March resulted in the Chief Constable deciding to temporarily introduce this equipment. Draft guidance on their use was provided to the Board and the PSNI took into account the subsequent response. More information on their use and the Guidance will be the focus of a significant report.

Human Rights Advice on the use of Spit and Bite Guards³⁰

Legal framework

The use of a spit guard is a 'use of force'. The use of force by police officers in Northern Ireland is governed by the Criminal Law (Northern Ireland) Act 1967, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the common law and the Human Rights Act 1998, incorporating the ECHR. The ECHR applies directly because s.6 (1) of the Human Rights Act requires the PSNI, as a public authority, to act compatibly with the ECHR. The 1967 Act, PACE and the common law apply to all uses of force by the PSNI and require that it should be "reasonable" in the circumstances. Reasonable in this context (given the engagement of Articles 2 and 3 of ECHR) should probably be interpreted as meaning "strictly necessary" in the execution of police duties.

Restraint and use of force

The use of force by police officers engages in a direct and fundamental way the rights protected by the ECHR such as Article 2 (the right to life) where lethal or potentially lethal force is or may be used; Article 3 (the right not to be subjected to torture,

²⁹ Recommendation 5, *Human Rights Annual Report 2016/17*

³⁰ Note this advice was produced before the spread of Covid-19 and does not take account of how that particular virus is transmitted.

inhuman or degrading treatment or punishment) and Article 8 (the right to respect for private and family life). Police officers have the authority to use force in order to defend themselves or another person, to effect an arrest, to secure and preserve evidence or to uphold the peace, but any such use must be justified on each and every occasion. Consideration must always be given to whether there is a viable alternative to the use of force. As a general rule, force and restraints must only be used if and when absolutely necessary and where all other means to contain a specific situation have failed. Any recourse to physical force in respect of a person deprived of his liberty not made strictly necessary by the conduct of the detainee is in principle an infringement of Article 3 because it has the effect of diminishing the human dignity of the individual involved. Any method of restraint used as punishment or retaliation by the police will violate Article 3.

It is recognised that there may be times, for example during transit or to prevent serious harm to others, when the use of force and the application of restraint may be unavoidable. Where this is the case, several conditions must be met and the use of force or application of restraints must be very closely scrutinised to ensure that their use was lawful, necessary and proportional.

PSNI Code of Ethics

Article 4 of the PSNI Code of Ethics, which draws upon the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states “Police officers, in carrying out their duties, shall as far as possible apply non-violent methods before resorting to any use of force. Any use of force shall be the minimum appropriate in the circumstances and shall reflect a graduated and flexible response to the threat. Police officers may use force only if other means remain ineffective or have no realistic chance of achieving the intended result”.

Mental Health

There is serious concern among mental health practitioners that the application of a guard to a person with a mental health condition or personality disorder will exacerbate the distress experienced by that person and result in for example hyperventilation, extreme behaviour and panic attacks. Furthermore, by obscuring a detainee’s face officers are prevented from identifying quickly whether the detainee has laboured

breathing, is choking or has suffered a facial or head injury. Conversely, the alternative to the use of a guard if police officers are to be protected from spitting or biting is to restrain the head which, it is argued by the National Police Chiefs Council, is likely to involve a greater use of force.³¹

Safety of Officers regarding the Risk of Infection

The Chief Constable must also ensure a safe system at work for his officers and refrain from infringing their ECHR rights. It is arguable that failing to provide protection from a foreseeable risk of contamination from spitting is a breach of the health and safety at work provisions and, as mentioned by the Chief Constable, has caused officers considerable stress while awaiting medical results following an incident of spitting or biting. A study³² explored the extent to which police services deploy spit guards and the rationale underpinning their use. It shows there is lack of information readily available from police services in respect of quantifying the numbers of police officers who have contracted infectious disease as a result of spitting and/or bites, despite the fact that risk of infection and the need for subsequent treatment is a driver of police services adopting the use of spit guard devices, as is the case for PSNI. The study concluded that consideration must be afforded to the possibility that the use of spit guards represents a form of mechanical restraint rather than a means to prevent transmission of infection, especially given the lack of information available from other police services in respect of officers who have contracted infectious disease as a result of spitting and/or bites. The study concluded that “*there appears to be no current, overarching guidance from UK national police bodies such as the National Police Chiefs' Council (NPCC) or the College of Policing (CoP) on the use of spit guards that is readily and easily accessible to the general public, despite substantial professional public interest and concern on their usage*”.

The NPCC describes spit and bite guards as ‘... *lightweight mesh garment that is placed over a person's head to help minimise the risks of communicable diseases (blood borne viruses (BBV)) and injuries associated with a suspect spitting and biting.*’

³¹ National Police Chiefs' Council, *NPCC Update on the use of Spit Guard*, 2017: available at <https://www.npcc.police.uk/2017%20FOI/CO/078%2017%20CCC%20April%202017%2006%20%20Spit%20Guards.pdf>

³² Kieran M. Kennedy et al, ‘The use of spit guards (also known as spit hoods) by police services in England, Wales and Northern Ireland: to prevent transmission of infection or another form of restraint?’ *Journal of Forensic and Legal Medicine*, July 2019

The study further concludes that “*The introduction of new devices and systems of restraint should be subject to rigorous checks and balances, in terms of a) why they are needed, b) whether such devices vary in efficacy, and c) whether there are any medical implications or complications to their use, most particularly with regard to children and other vulnerable groups.*”

A balance obviously needs to be struck between perceived health and safety needs of police officers and the human rights of detainees, and risks to particularly vulnerable groups.

Conclusion

Necessity: any use of force or restraint by police officers must be strictly necessary, be based on the previous behaviour of the detainee and the particular circumstances (specifically the risks to officers or members of the public) and cease once the circumstances requiring it cease. The use of restraints must not go beyond what can reasonably be considered to be necessary in the circumstances. Therefore, as the stated rationale for spit and bite guards is to protect officers from infection and there is a clear alternative (the police officer using mask/goggles, which are less restrictive, and could be put on without the risk of excessive force/harm to detainee) the necessity cannot be justified. Masks/goggles for officers could be made available to officers in the same way as spit guards are made available.

Proportionality and least restrictive method: any restraint used must be proportionate, and this includes the principle that the least restrictive method must be chosen. The ‘guarding’ of detainees has been found to violate Article 3 and obscuring a detainee’s sight is likely to violate Article 3. Therefore, when the stated purpose is to stop infection from spitting from the mouth, it is hard to justify a covering of the whole head including ears eyes and nose, even if it doesn’t fully restrict hearing/breathing/smell, and when the risk of contracting a communicable disease is extremely low. If the police officers have taken control of a suspect so that a guard can be placed on that person then to some extent the justification for the use of the guard may have largely disappeared. The use of guards to make it is easier to control a suspect is unlikely to provide a justification in itself.

Humiliation and debasement: Any conduct or treatment that intends to humiliate or debase, and treatment that does humiliate or debase even without this being its purpose, can violate Article 3. Therefore, it is hard to justify full head covering such as a spit and bite guard, which may be inherently humiliating even if this is not its purpose.

Nature of the detainee: Whether the use of restraint is a violation of Article 3 also depends on the nature of the detainee (mental health issues, age or other possible vulnerabilities). Therefore, in the circumstances in police custody when spit and bite guards are used it might not yet be known whether the person has any mental health issues or other vulnerabilities, so it may be difficult to ensure they are not used on people with mental health issues or other specific vulnerabilities.

The Human Rights Advisor will carefully monitor the recommendations from 2016/17 in respect of spit and bite guards during 2020/21 and advise the Board on the adequacy or otherwise of the Guidance produced by the PSNI for its officers. The temporary use of spit and bite guards by PSNI during the pandemic is analysed in the forthcoming report: Review of the Police Service of Northern Ireland Response to COVID 19 and further recommendations will be made in that report as a result.

BODY WORN VIDEO

The PSNI successfully completed the roll out of a Body Worn Video (BWV) across the organisation in 2017, aiming to maximise the benefits of new technology in capturing best evidence and ensuring police accountability.

In 2016 the Board's Human Rights Advisor attended the training and was satisfied that it covered all aspects of use and addressed, for example, Article 8 ECHR (the right to respect for the home and private life) and data protection issues.³³ The Board's previous Performance Committee supported PSNI's efforts although echoed the

³³ See also, Police Service of Northern Ireland Body Worn Video: Privacy Impact Assessment, August 2016, available at: <https://www.psni.police.uk/globalassets/advice--information/body-worn-video/body-worn-video-pia-v-1-2.pdf>

concerns of the Independent Reviewer of Justice and Security Act that the use of any new technology should be closely monitored.

The key issues are summarised below;

The Independent Reviewer of Justice and Security remarked in his eleventh report that the use of BWV should be considered best practice in all incidents of stop and search, and not simply encouraged.³⁴ Therefore, the Committee sought assurance from PSNI that any operational policy makes the use of BWV mandatory for all stop and search encounters. PSNI have since advised that a direction was given across the service that BWV must (rather than 'should') be used in all stop and search encounters. PSNI have additionally generated a corporate performance report which will assist them in establishing why the figure is not higher by informing Commanders and Senior Management of usage rates.

The Committee also sought assurances over the PSNI's internal monitoring of the use of BWV during stop and search encounters. PSNI have advised that BWV provides a clear audit trail and assists supervisors in quality assuring such interaction where concerns have been raised specifically or through management dip samples where necessary. Factors that may trigger a dip sample would include, but not be limited to, an officer who has attracted complaints or a Probationer Constable citing a stop and search incident for their portfolio of evidence.

PSNI have advised that any BWV information that is not considered evidential and will not form part of a subsequent prosecution will automatically be deleted after 31 days.

Taking account of recent findings in relation to the lack of coordinated approach to digital information sharing across the criminal justice system, Members raised concerns over the efficiency and security of PSNI's current method of sharing media on encrypted disks with the Public Prosecution Service (PPS) and Courts Service. PSNI have advised that a Digital Solutions Project is underway to explore how the PSNI could make best use of available technology to send audio and visual evidence

³⁴ Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Eleventh Report: 1st August 2017 – 31st July 2018, David Seymour CB, March 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786456/Eleventh_Report_of_the_Independent_Reviewer_of_Justice_and_Security.pdf

to the PPS. The project initially focussed on a simple delivery system via a Digital Sharing Platform, but a number of other uses have become apparent which will potentially enable PSNI to ingest evidence from the public in a secure manner and allow the external sharing of large documents with selected partners (Social Services, the Department of Justice, and Solicitors etc.).

A procurement process has been initiated for this composite information sharing portal. In any event, it is anticipated that the first stage of the Digital Solutions Project - the sharing of evidential BWV and digital interview recordings with the PPS - will have completed before the end of 2019. The Performance Committee have requested future updates from the PSNI on the outworking of this project³⁵.

PSNI have reported that BWV provides high quality, reliable evidence which supports and augments other evidential sources. For instance, BWV evidence is capable of being used to convict suspects at court without the need for a statement of complaint (i.e. 'victimless prosecutions'). This is particularly significant for cases which may have relied on victim testimony in order to meet the evidential threshold for prosecution, but where victims may not always engage for various reasons (for instance, in cases involving domestic abuse). PSNI reported that, in 2017/18, the percentage of domestic abuse cases proceeding to court with the use of evidential BWV was 39.11%, comparing to the 31.02% of such cases proceeding to court without its use.

Between May 2018 and May 2019 the PSNI created 37,280 exhibits of BWV overall, illustrating a significant level of usage, however the tangible impact of its use is difficult to discern. PSNI have asserted that BWV is 'expected to contribute to efficiency savings through improving the quality of evidence gathered and in turn to encourage early guilty pleas and as a result, less court hearings'.³⁶ However, upon further

³⁵ The first phase of the project commenced with PPS on 8 June 2020, which focusses on the digital sharing of multimedia evidence. This includes BWV, CCTV, photographs and 999/101 recordings. However PSNI have advised that, as the process embeds and partners in PPS and NICTS develop their systems of working, this list is expected to be added to. Work is also underway to establish a process to share BWV with OPONI using the same cloud-based platform used with PPS. PSNI reported that these work streams have already begun to reduce the number of encrypted DVDs required, and expect it will reduce further as additional phases are completed.

³⁶ Questions to the Chief Constable, Northern Ireland Policing Board, 6 June 2019, available at: <https://www.nipolicingboard.org.uk/questions/what-has-been-impact-body-worn-video-equipment-initiative>

probing, the Committee were advised that it is not possible to directly attribute the impact of BWV within the criminal justice process, owing to a number of contributory factors. In fact, at least in the short term, PSNI acknowledged that file preparation time and cost may have increased due to having another source of evidence to review. This should, in part, be addressed by the outworking of the Digital Solutions Project which will reduce the work required to produce physical disks.

Nevertheless, there appears to be a positive trend with regard to the impact on conviction rates so far; PSNI reported that an analysis of 2017/18 cases showed that where BWV evidence was presented, the conviction rate was 35.7% compared to 29.4% for cases without BWV evidence. In addition, the PPS has further provided figures obtained following a significant manual trawl of cases between May 2017 and May 2019. 1359 cases were checked overall and for those not involving the use of BWV, the decision rate for summary prosecution was 38.53%, for cases using BWV it increased by 4.15%, to 42.68%.

PSNI have provided anecdotal evidence that BWV has helped resolve false or unfair complaints against police officers to the Office of the Police Ombudsman (OPONI). This is beneficial, not only to the officers involved, but to OPONI investigators and legitimate complainants, by freeing capacity for those matters to be dealt with expeditiously. It is again difficult to discern any tangible evidence that can be attributed to BWV alone with regard to its impact on the number of complaints made. However a recent study conducted by the OPONI indicates that BWV has contributed to changes in the nature and frequency of complaints against police officers.³⁷ OPONI reports that there has been a 9% reduction in complaints³⁸ received by the Office since the introduction of BWV although the evidence is complex:

- Complaints arising from police searches decreased by 28%
- Complaints arising from arrests decreased by 17%
- Allegations about irregularities in police searches decreased by 21%

³⁷ The Office of the Police Ombudsman for Northern Ireland, 'Impact the introduction of body-worn video by the PSNI on police complaints in Northern Ireland', April 2020 available at:

<https://www.policeombudsman.org/PONI/files/0b/0b46b087-1f7f-4366-8b82-6dab63c0ccce.pdf>

³⁸ Although there has been a downward trend in complaints over the last few years.

- Allegations about incivility decreased by 19%
- Allegations about oppressive behaviour decreased by 16%
- Allegations about unlawful arrests or detentions decreased by 12%

BWV, where available, was usually helpful in the investigation and often the investigation was quicker as a result. In complaints against officers, BWV was activated by officers more often following an arrest and where the complaint concerned oppressive behaviour, specifically about being assaulted. Where BWV was available the complaint was more likely to be 'fully investigated' but the findings were less likely to substantiate the allegation made.

Given that the use of BWV can be intrusive and careful consideration must be given in respect of Article 8 the Board sought reassurance that human rights considerations and principles of proportionality and transparency have been demonstrated in its use. Guidance on the use of BWV was produced in January 2020³⁹ and the PSNI have some helpful information on the use of BWV on their website.⁴⁰ Although the Guidance does not appear to set out specifically the human rights considerations for officers there is a detailed 'PSNI Body Worn Video (BWV): Privacy Impact Assessment' from 2016, which is available on the PSNI website.

The Board also sought assurance on how BWV footage can assist supervisors in quality assuring interactions, such as stop and search and how management dip sample the use of BWV. The PSNI advised that, although, there is no set process for reviewing BWV, an internal product was being developed to assist managers and will be referenced in the guidance documentation.

The Human Rights Advisor plans, in the coming year, to view samples of BWV to see how it helps to understand how PSNI officers undertake stop and search.

³⁹ See <https://www.psnipolice.uk/globalassets/advice--information/our-publications/disclosure-logs/2018/operational-policing/a-f/body-worn-cameras---service-instruction.pdf>

⁴⁰ See PSNI webpage at https://www.psnipolice.uk/advice_information/body-worn-video/

Recommendation 3

The Body Worn Video guidance should be expanded to include more information about the human rights issues involved in the use of Body Worn Video (especially in relation to privacy).

MENTAL HEALTH

Police officers will often come into contact with people experiencing a mental health problem, whether as victims of crime, witnesses, offenders, or when detained under the Mental Health Act. In 2013 PSNI received a total of 8,686 calls with a mental health aspect. Between January 2018 and December 2018 that total was 20,709, with the number of reported occurrences reaching a peak in July 2018 (1,965 occurrences). It is outlined that within this same time period, mental health occurrences accounted for 3.6% of all occurrences. By way of comparison, a report published by HMICFRS in November 2018 states that 2.8% of all recorded incidents in England and Wales, from June 2017 - June 2018, involved mental health concerns. There is no clear explanation for the above mentioned statistics but PSNI do report that of the 20,709 occurrences recorded, 1,327 were classified as notifiable crime (6.4%). A total of 1,581 offences are linked to these occurrences. During the same period a total of 98,916 offences were recorded; thus crime related to mental health accounted for 1.6% of overall crime.⁴¹

In response to this increase in demand PSNI have developed a Mental Health Strategy supported by a Mental Health Action Plan. An operational mental health lead has been appointed since 2016 and subsequently each of the 11 policing districts have identified mental health points of contact.

In July 2018 a collaborative approach in addressing calls for service for those experiencing mental health or emotional crisis was established – a street triage scheme. This innovative approach is a first for PSNI and sees two PSNI officers, an

⁴¹ PSNI, 2019/20 Policing Plan Performance Monitoring – Report, Measure 2.1.2: Improve the service to vulnerable groups and improve outcomes in collaboration with partners in relation to Mental Health (November 2019) [NOT PUBLIC]

Ambulance Service paramedic and a South Eastern Health & Social Care Trust (SEHSCT) mental health professional on shift together each Friday and Saturday night from 7pm until 7am the following morning with the capability of offering telephone advice to colleagues on scene or physically attending to make mental health triage assessments. PSNI has advised that since July 2018 this service has expanded with the support of Belfast Health and Social Care Trust .This enabled service provision to the entire population of Belfast and surrounding areas, from Newcastle, Co. Down, and reaching to Crumlin in Co. Antrim.

Anecdotally, PSNI advised officials that the street triage pilot has seen a reduction in emergency department presentations via PSNI or NI Ambulance Service (NIAS) to the Ulster Hospital over the two weekend nights they are on shift equating to less time for police waiting with individuals in crisis to be seen and therefore allows for other front line duties to be carried out. PSNI officers working on the mental health team have seen a benefit of increased knowledge in the area of mental health from working directly with mental health practitioners on shift as well as paramedics. This has allowed officers to increase their skillset and allows them to utilise and share some of these skills when they return to their normal duty routine when not on weekend shift with the mental health team. There is also a clear cost benefit from time not spent at hospital by police. Street triage will be subject to a detailed evaluation report which will be considered by the Performance Committee once available.

Recommendation 4

The street triage pilots, subject to a positive evaluation, should be expanded to the whole of Northern Ireland and the PSNI should seek support from the Department of Health to achieve this.

LEGACY

The Historical Enquiries Team (HET) was established By the PSNI in September 2005 to examine the deaths attributable to security situation in Northern Ireland between 1968 and 1998. Following a review and a highly critical report by Her Majesty's Inspectorate of Constabulary in 2014/15 and further reviews and consideration by the

Policing Board (which include a concern about Article 2 and the requirement for independence) the PSNI created the Legacy Investigations Branch (LIB) to investigate deaths from the past. The LIB brought together a number of different parts of the PSNI who were, up to 2015, conducting reviews and investigations in historic cases. The LIB's remit is to review the more than 1,100 cases not concluded by the HET and to conduct investigations into cases which present fresh investigative and evidential opportunities. LIB's role is primarily to investigate homicide and security forces related deaths arising from the Northern Ireland 'Troubles' between 1969 and 2004. LIB are also responsible for unsolved 'non-troubles' related deaths between 1969 and 2004.

LIB engages directly with families and their representatives with the aim of providing them with as much information and support as possible and co-operates with other statutory bodies, such as coronial inquests, to provide them with contemporarily generated materials to support their work. The Branch is also tasked with taking forward reviews and investigations into the fatal incidents linked to those who were previously considered by the 'on-the-runs' scheme.

Reviews into the historic cases are conducted by the LIB as serious crime reviews. The review team examine the original investigation to identify opportunities to bring offenders to justice. If any evidential opportunities are found LIB will then commence an investigation. This is one of the key differences between LIB and HET whose work was restricted to reviews with any subsequent investigations being carried out by PSNI's Serious Crime Branch. Consequently the pace at which reviews are completed by LIB can appear slower than HET. At the end of the review or investigative process LIB provide families and their representatives with a written report.

The PSNI has recently completed a comprehensive internal review of LIB's key policy and guidance documents with a view to making it's work more visible, accessible and responsive to the families who have lost loved ones. LIB has as part of this process consulted a range of external stakeholders including the Northern Ireland Policing Board and published the documents on it's external web-site. These documents include 'Family Guidance', 'Conflict of interest policy', 'Family Engagement Strategy'

and 'Case Sequencing Model'. The LIB's 'Case Sequencing Model'⁴², which the PSNI believes is in line with its duties as set out in section 32 of the Police (Northern Ireland) Act 2000 and Article 2 of the ECHR, determines the order in which cases are prioritised. PSNI argues that in line with its contemporary policing mission 'Keeping people safe' the highest priority for investigation is those cases which involve 'individuals that are considered by the police service to pose a potential threat to citizen's safety today'. The other priority categories relate to 'Forensic Potential'; 'Criminal Justice Status'; and 'Case Progression'.

Stormont House Agreement

The Stormont House Agreement of 2014 proposed a series of different procedures and institutions to deal with the issues from the past and in 2018 the Northern Ireland Office consulted on the draft legislation needed to establish a Historical Investigations Unit (HIU). It was proposed that the HIU be established as an independent institution to investigate all the 'Troubles-related deaths'. This would include those from the HET, the LIB and the parallel historical cases from the OPONI and would include Troubles-related deaths from 1998 to March 2004. The Board would have an accountability role and would monitor the performance of the HIU. The obligations under Article 2 would be made specific and the Director of the HIU would be required to make statements about how those obligations would be complied met, clause 6 (4) of the Stormont House Agreement Bill:

“... the manner in which the HIU is to exercise its investigatory function so as to secure:- (a) that its Article obligations are complied with; (b) that its other human rights obligations are complied with...

(5) The statements required by section (4) above must (in particular) deal with compliance with HIU's Article 2 obligations, and other human rights obligations, in connection with the investigation of deaths in accordance with the conflict of interest protections.”

⁴² PSNI Legacy Investigation Branch, Case Sequencing Model Version 3 – January 2018 available at <https://www.psni.police.uk/globalassets/inside-the-psni/our-departments/legacy-investigation-branch/documents/case-sequencing-model-updated-19012018-v03.pdf>

However, in March 2020 the Northern Ireland Office appeared to have changed its approach and stated that a new:

“... body will oversee and manage both the information recovery and investigative aspects of the legacy system, and provide every family with a report with information concerning the death of their loved one...”

“The Government will ensure that the investigations which are necessary are effective and thorough, but quick, so we are able to move beyond the cycle of investigations that has, to date, undermined attempts to come to terms with the past. Only cases in which there is a realistic prospect of a prosecution as a result of new compelling evidence would proceed to a full police investigation and if necessary, prosecution. Cases which do not reach this threshold, or subsequently are not referred for prosecution, would be closed and no further investigations or prosecutions would be possible - though family reports would still be provided to the victims’ loved ones. Such an approach would give all participants the confidence and certainty to fully engage with the information recovery process.”⁴³

At the time of writing, the details of this body and the arrangements that are to be put in place were not available and, whilst this new approach raises questions about compliance with Article 2, no comprehensive analysis is yet possible. However, a recent report by academics from Queen’s University and staff from the Committee for the Administration of Justice have produced a useful and detailed assessment of the new proposal’s compliance with human rights.⁴⁴

Human Rights and Legacy Investigations

Effective review and investigation procedures must be in place regarding injuries and/or deaths resulting from the use of force or firearms by police officers and other state agents.

⁴³ Northern Ireland Office, Press Statement ‘Addressing Northern Ireland Legacy Issues’ 18 March 2020 <https://www.gov.uk/government/news/addressing-northern-ireland-legacy-issues>

⁴⁴ Committee on the Administration of Justice, ‘Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis Of Proposals On Dealing With The Past In Northern Ireland’ <https://s3-eu-west-1.amazonaws.com/caj.org.uk/2020/04/09093700/Prosecutions-Imprisonment-the-SHA-LOW-RES.pdf>

“An adequate response by the authorities in investigating allegations of serious human rights violations may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of impunity, collusion in or tolerance of unlawful acts. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.” (Husayn v Poland (2014))

An effective official independent investigation is required whenever an individual is killed as a result of force being used by an agent of the state or if a police officer may have contributed to the loss of life in some way. That is to say, when it is arguable that there has been a breach of Article 2 of the ECHR (*Anguelova v Bulgaria* (2002)). It is not necessary for a state agent or police officer to be directly involved in the death to trigger this independent investigation (*Menson v UK* (2003)). For instance, the ECtHR considered that in a case of prolonged domestic abuse of a mother and daughter, which had led to the mother’s death, and where the authorities had failed to protect her, the obligation under Article 2 for an independent applied (*Opuz v Turkey* (2009)). The investigation must be prompt, thorough, impartial (*Brecknell v UK* (2008)), initiated by authorities even if no complaint is made, transparent (*Edwards v UK* (2002), *Ramsahai v Netherlands* (2007)), and thorough so as to ensure accountability and responsibility (*Anguelova v Bulgaria* (2002)). This obligation continues to apply even in difficult security conditions and all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (*Al Skeini and others v United Kingdom* (2011)).

The requirement for independence means that it is necessary for the persons responsible for carrying out the investigation to be independent from those implicated in the events. This requires a lack of hierarchical, institutional or practical connections, such as where the investigator belongs to the same police force as those under investigation.

“For an investigation into alleged unlawful killing by State agents to be effective, it may be generally regarded as necessary for the persons responsible for carrying out the investigation to be independent from those implicated in the

events. This means not only a lack of hierarchical or institutional connection but a practical independence.” (Jordan v UK (2001)).

The investigation must involve an assessment of the organisation and planning (if any) of the operation during which lethal force was used. The training, instructions and communications of those who used lethal force and those who lay behind the operation are relevant to that assessment (McCann v UK (1995)).

An effective official investigation requires the appropriate authorities to secure all the relevant evidence concerning the incident causing death and to analyse the cause of death (Anguelova v Bulgaria (2002)); it also requires a degree of public and independent scrutiny and the involvement of the family of the deceased in the procedure to the extent necessary to safeguard their legitimate interests (Anguelova v Bulgaria (2002)).

The duty to investigate suspicious deaths can arise even where there is no suggestion of any state involvement in causing death either deliberately or by omission (Menson v UK (2003)); the form of the investigation will vary with the circumstances, but must always be prompt, rigorous and impartial (Menson v UK (2003)); in order to be effective, the investigation should be conducted by individuals independent of the alleged perpetrators. The duty to investigate is a continuing one (Re McKerr [2003] NI 117).

Current Litigation Issues for the PSNI and the Investigatory Duty of Article 2

Since its inception LIB has commenced 24 reviews and 20 investigations and completed 9 reviews and completed 14 investigations. There have been a considerable number of cases in the courts in Northern Ireland, the House of Lords and Supreme Court and the European Court of Human Rights (ECtHR) over the last few decades dealing with challenges based on Article 2.⁴⁵

⁴⁵ Brice Dickson, *The European Convention on Human Rights and the Conflict in Northern Ireland*, (OUP 2010) Pg. 231

In the case of *Brecknell v UK* the ECtHR in 2004 stated that “*the PSNI was institutionally distinct from its predecessor [RUC] even if, necessarily, it inherited officers and resources.*”⁴⁶

In 2019 *McQuillan*⁴⁷ judgement, the Court of Appeal in Northern Ireland however concluded that the LIB had not demonstrated the capacity to be practically independent in respect of the conduct of that specific legacy investigation for the purposes of Article 2 of the Convention.

“[199] Maguire J concluded that there was a real possibility of bias in both the RUC investigation and the HET investigation. That real possibility of bias requires clear practical arrangements being put in place so as to secure the capacity of the investigation to be independent. It is a feature of this case that the Chief Constable has not set out the practical arrangements which he proposes to put in place to carry out any further review or if credible evidence exists any further investigation. This is an obvious case calling for arrangements such as those in *Hackett* or *Kelly* so that a senior police officer from another police force would be responsible for the investigation reporting to the Chief Constable who is accountable to the Policing Board. Absent any statement by or on behalf of the Chief Constable as to what arrangements will be put in place the only conclusion available is that the further review or investigation by the LIB has not been demonstrated to have the *capacity* to satisfy the Article 2 requirement of practical independence.”⁴⁸

Although it is understood that an appeal in this case will now be heard by the Supreme Court, in the meantime, the PSNI has nevertheless put in place alternative arrangements for the carriage of the investigation. More widely, in the meantime, the PSNI pending the creation of any new body to investigate these cases, will need to put in place measures to try to demonstrate its capacity to be practically independent⁴⁹ for those cases where concerns exist about their independence to carry out the

⁴⁶ At para 76.

⁴⁷ 19th March 2019. See also *Barnard*, Court of Appeal, 5th July 2019

⁴⁸ At para 199.

⁴⁹ LIB have commenced a review of it's processes and documents to more effectively address the requirements of Article 2 compliance. A consultation with key stakeholders in progress.

investigation. The Court of Appeal has indicated that one option for this cohort of cases would be to appoint officers from outside of the PSNI to run the investigations.⁵⁰ This has been an approach that appears to have the capacity to address Article 2 independence requirements in other cases, for instance, in the investigations “surrounding an alleged individual codenamed Stakeknife”, Operation Kenova.⁵¹ However, it should be noted that the Chief Constable has already discussed this issue with the Board and advised it of the difficulty in securing outside assistance from senior officers with sufficient experience who are willing to take on this role.

It should also be noted that there are many cases pending an Article 2 type of inquiry. Some of these continue to be subject to litigation in the higher courts and challenges to PSNI, first, on the basis of promises made (legitimate expectation) even in the context of statements made at meetings of the Policing Board. Secondly, in relation to the extent to which this duty has already been complied with or is said to be no longer a duty because of the time that has expired.⁵²

Recommendation 5

Pending the establishment of the Historical Investigations Unit the PSNI should put in place procedures that comply with the Article 2 requirements for legacy investigations as set out in the Court of Appeal case of McQuillan. At a minimum this should include consideration of the appointment of Senior Investigating Officers from outside the PSNI to lead investigations where practical independence is in question.

Investigations by the Police Ombudsman and Disclosure

The Criminal Justice Inspectorate (CJINI) reported on 2 April 2020 on its inquiry into disclosure by the PSNI to the OPONI. The factual basis for their inquiry as set out in the report is as follows:

⁵⁰ See Hackett v UK

⁵¹ Led by Jon Boutcher, previously the Chief Constable of Bedfordshire, <https://www.opkenova.co.uk>

⁵² For example, Finucane, Supreme Court, 27 February 2019 and Barnard, Court of Appeal, 5th July 2019

'On 14 February 2019 the former Police Ombudsman for Northern Ireland reported publicly that his investigators had identified sensitive material held by the Police Service of Northern Ireland which had not been made available to the Office of the Police Ombudsman for Northern Ireland. The discovery was made during the OPONI investigation into the murder of five people at a betting shop on the Ormeau Road in Belfast on 5 February 1992, and had also begun new OPONI lines of inquiry into the activities of Loyalist paramilitaries in the north west between 1988 and 1994, and the murder of Damien Walsh at a coal depot in west Belfast in 1993. The PSNI acknowledged the disclosure failings, apologised to those affected, and said that it had not sought to deliberately withhold the information.'⁵³

The CJINI made a series of strategic and operational recommendations in its report.

Recommendation 6

The PSNI should report to the Policing Board on implementing the recommendations made in the CJINI review into the methods used to disclose information in respect of historic cases to the office of the Police Ombudsman for Northern Ireland.

STOP AND SEARCH

The main powers which the majority of stop and search encounters are contained within the Misuse of Drugs Act 1971, the Firearms (Northern Ireland) Order 2004, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Justice and Security (Northern Ireland) Act 2007 (JSA) and the Terrorism Act 2000 (TACT).⁵⁴ The

⁵³ A review into the methods the Police Service of Northern Ireland use to disclose information in respect of historic cases to the office of the Police Ombudsman for Northern Ireland, April 2020, available at <http://www.cjini.org/TheInspections/Inspection-Reports/2020/January-March/Disclosure>

⁵⁴ The Misuse of Drugs Act, Firearms Order and PACE provides police officers with a range of powers to stop and search persons, vehicles and premises for drugs, firearms, and, in respect of PACE, stolen articles, articles with a blade or point, prohibited articles and fireworks. The powers in TACT provide police across the United Kingdom with search powers specifically relating to the investigation of terrorist activity. The JSA applies only to Northern Ireland and provides PSNI officers with additional powers to search for unlawful munitions or wireless apparatus.

Justice and Security (Northern Ireland) Act 2007 provides the PSNI with additional powers of entry, search and seizure that are not available to other police services in the United Kingdom under the common law or existing statutory provisions such as TACT - these powers extend to Northern Ireland only.

Any use of a stop and search power, be it for road traffic purposes or counter-terrorism reasons, potentially engages a range of human rights⁵⁵ and therefore PSNI must ensure that all use is proportionate, justified and is strictly in accordance with the legal framework.

In February 2019 the Board agreed that the police use of the powers to stop and search and stop and question would be subject to more focused scrutiny.⁵⁶ The Board is regularly provided with statistical reports showing PSNI's use of stop and search across the range of powers available and in April 2019, the Performance Committee invited Dr John Topping to its meeting to provide an overview of his research in this area; and in May 2020, Members received a briefing from PSNI on the use of the powers. The Board considers that a number of issues remain outstanding and will continue to work with the PSNI to resolve them in the coming year.

Statistics

Officers are required to make a record of the details of a stop and search at the time of encounter. This data is downloaded from a stop and search database, validated and published on a quarterly basis. During 1 April 2019 to 31 March 2020 the PSNI recorded that the number of persons stopped and searched/questioned fell for the fourth consecutive year.⁵⁷ During this period 25,450 persons were stopped, representing a decrease of 9% from the previous year. PSNI reported an overall decrease in the use of all legislative powers, however the arrest rate has remained consistently low over in recent years, with 7% of stops resulting in an arrest during

⁵⁵ For example, the Article 5 European Convention of Human Rights (ECHR) right to liberty and security of the person; the Article 8 ECHR right to privacy; and, on a broader basis, the Article 14 ECHR right to freedom from discrimination in the enjoyment of other ECHR rights

⁵⁶ The findings of the review were published in May 2019, the full report is available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/committee-review-psni-use-of-stop-and-search-powers.pdf>

⁵⁷ PSNI, Use of Stop and Search Powers by the Police in Northern Ireland 1 April 2019 to 31 March 2020, available at: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/stop-and-search-statistics/2019/psni-stop-and-search-report-1920.pdf>

2018/19 and 2019/20. However, in 2019/20, PSNI recorded an additional 13% resulted in another form of outcome, such as a Community Resolution Notice.

Of the 25,450 persons stopped and searched or stopped and questioned between 1 April 2019 and 31 March 2020, 13% (3,211 persons) of all stops were on persons aged 17 and under. Of those 3,211 persons, 70% were stopped and searched under the Misuse of Drugs Act. The age group most commonly stopped and searched by the police is typically the 18–25 year age bracket (accounting for 42% of stops questioned during the reporting year) and 88% were male. In terms of the different legislative powers, 65% of stops were conducted under the Misuse of Drugs Act (arrest rate 6%) and 13% of stops were conducted under PACE (arrest rate 20%). 19% of stops were conducted under the JSA Section 24 and 4% under the JSA Section 21 (with arrest rates of 1% for each power).

Table 1: Number of times each power was used for a stop and search/question during April 2019 to March 2020 compared to the previous 12 months

Legislation	April 2018 – March 2019		April 2019 – March 2020	
	Number of persons stopped	Subsequent arrest rate(1)	Number of persons stopped	Subsequent arrest rate(1)
PACE	3,905	21%	3,300	20%
Misuse of Drugs Act	17,081	6%	16,495	6%
Firearms Order	76	25%	47	26%
TACT S43	58	7%	28	14%
TACT S43A	16	6%	10	0%
TACT 47A	0	-	0	-
JSA Section 21	1,283	1%	997	1%
JSA Section 24	6,035	1%	4,818	1%
Other (2)	79	6%	21	14%

National Security

The Board has given particular focus over the years to PSNI’s use of counter- terrorism and security powers contained within TACT and the JSA. The statutory Code of Practice issued by the Northern Ireland Office on the authorisation and exercise of TACT stop and search powers, states that the “*appropriate use and application of*

*these powers should be overseen and monitored by the Northern Ireland Policing Board.*⁵⁸ The Board and the Human Rights Advisor have met regularly with the Independent Reviewer of Terrorism Legislation (currently Mr Jonathon Hall QC) and the Independent Reviewer of the JSA (currently Mr David Seymour) to discuss PSNI's use and application of the TACT and JSA powers.

Twenty-three per cent of stops are conducted under the Northern Ireland-only JSA, the “without suspicion” powers. Over the last two years there has been significant public debate around the PSNI's use of their powers to stop and search. Section 24 provides police officers with the power to stop and search any person for any wireless apparatus or munitions. The police officer conducting the search need not have any reasonable suspicion that the person being searched is carrying such items provided that an authorisation made by an officer of at least the rank of Assistant Chief Constable is in place. A ‘without suspicion’ power to search for evidence of terrorist activity and accompanying authorisation regime exists within section 47A TACT, however an authorisation for use of this power has not been in place for a number of years, with PSNI instead relying upon the section 24 JSA power. A range of concerns have been raised by stakeholders in relation to PSNI's use of the “without suspicion” power. One such issue is the low arrest rate following use of the “without suspicion” stop and search power under section 24 JSA which has typically remained at 2% or less – raising questions about its targeting, effectiveness and use of precious resources. A second issue concerns the fact that authorisations are reviewed every single two week period and for every district of Northern Ireland.

The exercise of police powers contained within TACT and JSA to stop and search or stop and question without suspicion is a significant intrusion into personal liberties and a potential interference with the rights guaranteed by the ECHR.⁵⁹ Thus the Board has paid particular attention to PSNI's authorisation of these powers and closely considers the operational need for them and their community impact. In March 2014 the Board agreed that in order to ensure that the Board is in a position to effectively oversee and monitor the authorisation regime for use of police security powers, the

⁵⁸ See below for the approach taken by the Policing Board.

⁵⁹ Similar powers under TACT were rules unlawful by the ECtHR and subsequently withdrawn, *Gillan v UK*.

Human Rights Advisor would, on behalf of the Board, conduct quarterly reviews of all stop and search authorisations made under TACT and JSA.

Scrutiny over stop and search authorisations has been a priority for the Board both in terms of monitoring PSNI's human rights compliance and in respect of the value and reassurance that oversight in this area brings to policing and confidence in policing; it was for these reasons that the Board instructed a suitably qualified and developed vetted legal advisor to seek assurance on the authorisations throughout the period September 2017 to September 2019. The Board's former Human Rights Advisor monitored these authorisations (March 2014 – September 2017) and Joanne Hannigan BL carried out this role during the absence of a Human Rights Advisor (March 2017-September 2019). This review procedure will be continued by the Board's Human Rights Advisor once the Covid-19 emergency allows travel and face to face meetings again.

Counsel has found each PSNI authorisation to be '*in accordance with the law and in accordance with Codes of Practice*' and advised that the authorisations were detailed, critical and well-reasoned. Furthermore, the authorisations were found to be necessary and proportionate in response to the current threat. Counsel reiterates in each report that authorisations may extend over no greater an area and for no longer than is necessary, and while she was satisfied as to the temporal and geographical extent of the authorisations, this is something that must be "*kept under review and should not be taken for granted.*"

The Human Rights Advisor has also been briefed by PSNI on the process of collecting intelligence data and the procedure for authorisations. The process of authorisation involves the collection of daily raw data from all districts via email to a central point from districts and this is assembled on pro-forma and sent via Superintendent to an Assistant Chief Constable not directly involved in this area of operations for authorisation and then on to the Department of Justice and finally to the Northern Ireland Minister for the final authorisation. Apparently, this process results in a considerable number of challenges and requests for more information and monitoring the details of this process will be a task for the Human Rights Advisor in the next year.

PSNI Policy and Service-level directions for Stop and Search

A recommendation was made in the Board's Thematic Review of the Police Use of the Powers to Stop and Search⁶⁰ requiring PSNI to have a clear stand-alone policy on the use of TACT and JSA stop and search. A stand-alone policy was apparently developed, but never finalised as it was superseded by a high-level policy covering all searches, which referenced appropriate legislation, Codes of Practice, College of Policing guidance and the PSNI search manual. In addition to this PSNI has a dedicated website page on stop and search providing detailed information in relation to the applicable law and frequently asked questions. In 2018 Counsel,⁶¹ during the monitoring of the stop and search authorisations, examined the relevant policy documents and the range of information on the PSNI website and commented that while the information is appropriate and helpful, *"it does not articulate a specific PSNI policy in respect of searches under TACT or JSA on the website. It would be helpful if this could be rectified as a matter of urgency"*.

There are three potential levels of guidance which the PSNI might want to have in policy documents or Service Instructions. The first is guidance for individual officers on how a particular power should be used in relation to an individual - much useful guidance on this topic is provided by the various statutory codes. Secondly, the PSNI could give more detailed guidance to officers on the street and their supervisors on each of the powers and could cover more details of the use of BWV, more detailed explanations of the human rights issues that are engaged, particularly the right to privacy in Article 8 and, lastly for supervisors, best practice on "after-the-event" assessments of the encounters and learning lessons (including how to take advantage of BWV recordings). Thirdly, guidance could provide more useful assistance to supervisors on how they task officers before shifts on which powers to use in which (geographical) areas and for which policing objectives.

Questions remain, therefore, around whether general stop and search guidance (suggested by PSNI) will provide the same safeguards as bespoke policy guidance for

⁶⁰ Recommendation 3, Northern Ireland Policing Board, Human Rights Thematic Review on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007

⁶¹ Ms. Joanne Hannigan BL, Report to the Northern Ireland Policing Board, Stop and Search Authorisations 1st September to 31st March 2018.

each of the different statutory powers to stop and search. A general policy which covers issues such as the conduct of searches, the responsibilities of officers and the internal oversight structures (including discipline) in relation to all stop and search powers, while a helpful resource for assisting an officer's understanding of PSNI's general approach to stop and search, it may not emphasise the need for an individual officer to decide which the most suitable power is in a given situation.

Policy plays a role in providing reassurance through public accountability. The PSNI's webpage states; "*PSNI policy also provides reassurance to communities and partners of our commitment to service delivery through accountability, collaboration, fairness, courtesy and respect*". In his most recent report,⁶² Mr Seymour states that a clearly articulated, service-wide strategy would demonstrate the cumulative impact of the safeguards already in place is effective. This goes beyond the assurance from the PSNI that officers are guided by instructions on the legal and professional use of these powers, and would provide transparency around the supervisory and accountability arrangements. PSNI advised the Board that they consider a high-level policy allows officers to consider and apply any human rights issues arising across all aspects of stop and search and in drafting this high-level policy PSNI remain open to further discussion on this issue with the Board.

Supervision of powers

The Board has prioritised the importance of supervision and monitoring in respect of securing public confidence in the use of these powers and as result sought further information on PSNI's arrangements for ensuring supervision over the use and recording of stop and search and stop and question encounters and the criteria for dip-sampling by supervisors, including whether individual supervision over the exercise of stop and search is used to identify trends or patterns (including down to the level of individual officers) and, if so, what action is taken and at what level. Of particular interest is the supervision of the powers contained within PACE and the

⁶² Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Eleventh Report: 1 August 2017 – 31 July 2018, David Seymour CB, March 2019

Misuse of Drugs Act, specifically in relation to the examination of officers documented reasonable grounds for suspicion.

Mr Seymour highlights supervision as an area potentially requiring further improvement. While he found that 10% of the stop and search/question were monitored by a supervising officer, it was not clear that they were supervised systematically (for example, in response to a service wide instruction), rather it appears to be very much down to local discretion. He notes that it is also unclear what the outcome is of such supervision in terms of lessons learned and promulgated.

The Board will work with the PSNI to seek further information on the criteria used for dip sampling/quality assuring stops and searches and the Human Rights Advisor will do his own dip sampling of any BWV material that features the use of stop and search powers in the coming year.

Body Worn Video and Stop and Search

The Board has discussed with the PSNI the potential use of BWV by supervising officers, who may view material and satisfy themselves that the powers are being used appropriately. Mr Seymour provides a practical example of this, proposing that the stop and search policy could require the use of BWV in all situations of stops and search involving children and thereafter require that the supervising officers must view the video in order to satisfy themselves that it was an appropriate use of the power.⁶³ Mr Seymour advised that, following a direction issued by senior management in May 2019, overall BWV usage in relation to all stop and search powers increased.

Record Keeping and Providing Reasons

Police officers are required to have a rationale as to why one particular person or group of persons is to be stopped and searched. The more carefully these reasons are considered the more likely it is that the stop and search will be effective.⁶⁴ The

⁶³ Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Tenth Report: 1 August 2016 – 31 July 2017, Mr Seymour CB, March 2017

⁶⁴ See, for instance research by Leicester University: "Under [Project Servator](https://www.le.ac.uk/news/2019/december/17-servator), an initiative launched by the City of London Police in 2014, around one in three (37%) of stop and searches carried out in 2018/19 resulted in a positive outcome, such as weapons or illegal drugs being found or an arrest. This is compared to a national average positive outcome rate of 17% across UK police services in 2018/19." <https://le.ac.uk/news/2019/december/17-servator>. PSNI senior officers are now considering this alternative approach, potential for use in Northern Ireland.

Human Rights Advisor advises that, even in cases where officers do not need reasonable suspicion e.g. a JSA stop based on intelligence, it may be possible to give the person that is being stopped some indication of why the power is being exercised. Such explanations, even where precise details cannot be disclosed, often make the encounter less difficult and are less likely to alienate the member of public as a result. Setting this good practice approach within the guidance and recording the reasons given will allow both the officer and, subsequently, his or her supervisor to reflect on the success of the operation.

In a previous report Mr Seymour recommended that the PSNI should keep a written record each time a search involves a child or in any case where an unexpected incident has occurred or where it is likely to be considered controversial. With regards to the 'without reasonable suspicion powers', it is PSNI's view that police officers should not be required to articulate reasons why a particular person should be stopped and searched. In their view, it is sufficient under the legislation and Code of Practice, that an individual is told that due to the current threat in the area and to protect public safety a stop and search authorisation has been granted. Mr Seymour previously considered this issue saying that '*The purpose of keeping such a record would be to (a) assist in the internal monitoring and supervision of the most appropriate use of these powers and (b) place the PSNI in a stronger position in the event of a subsequent challenge or complaint*'.⁶⁵ Mr Seymour notes with caution that the roll out of BWV may demonstrate that the stop and search is conducted professionally and with courtesy, but it is not an explanation of what caused the person to be stopped in the first place.

Children and Young People

The Young Life and Times Survey 2017 reflected what the Board has heard from the Children's Law Centre, NI Commissioner for Children and Young People (NICCY) and Include Youth over the years: that young people identify the use of stop and search as one of their biggest concerns with the police, and believe they are discriminated against and treated with disrespect.

⁶⁵ See the reference to the Ramsey case below.

In May 2018 Dr John Topping from Queen's University published research which gave the first independent analysis of how 16 year olds are experiencing stop and search powers being exercised by the PSNI.⁶⁶ The findings raised a number of issues concerning the socio-economic background of young people being stopped and how young people understand their rights under these powers. Dr Topping refers to stop and search powers as *"the most prevalent form of adversarial contact between the public and the PSNI."* In June 2018, NICCY published a 'Statement on Children's Rights in Northern Ireland' appealing for a re-evaluation of the use of stop and search on under-18s and greater transparency in relation to why, where and on whom it is used.

In September 2019 Queen's University, in partnership with Include Youth and the Children's Law Centre, hosted a conference on young people, policing and stop and search powers in Northern Ireland.⁶⁷ Consideration was given to how the suggested overuse of the power to stop and search can seriously undermine police legitimacy, particularly in the absence of opportunities for the police to engage positively with children and young people. In response PSNI advised that they are not out to criminalise young people and try to provide interventions and other forms of disposal where they can. They have further stated *"there is no restriction in law preventing the stop and search of under 18s, therefore police officers will use their powers under stop and search when they have reasonable grounds [to do so]"*.⁶⁸

Impact on Public Confidence

The role of the PSNI is to keep people safe, but that has to be tempered by the need for the stop and search powers to be "justified, lawful and stand up to public scrutiny". There is a role here for supervising officers to ensure that a JSA stop and search only takes place when that test is met. Close monitoring and supervision is essential for the maintenance of public confidence in the use of these powers.

⁶⁶ John Topping and Dirk Schubotz, *The 'usual suspects'? Young people's experiences of police stop and search powers in Northern Ireland*, ARK research update, May 2018.

⁶⁷ Attended by: PSNI Chief Constable Simon Byrne, Prof Ann Skelton of the United Nations Committee on the Rights of the Child, Katrina French, Chief Executive, Stop Watch NI Commissioner for Children and Young People, Children's Law Centre, Include Youth, among others.

⁶⁸ <https://www.nicva.org/article/psni-urged-to-reconsider-use-of-stop-and-search-on-under-18s>

The Policing Board noted the words of LJ Colton in a recent High Court judgment which stated;

“Those involved in the creation and exercise of stop and search powers should not underestimate the potential for public harm in the event that the powers are used arbitrarily and excessively in respect of minors in terms of the effect it could have on confidence in and support for the PSNI. In those circumstances I consider that there is an obligation on the respondents to satisfy the “*in accordance with law*” requirements of Article 8(2) or the “quality of law” requirement demanded by Convention law. It is a power which does require justification and which requires to provide effective guarantees and safeguards against abuse. The relevant law must be clear and precise and thus will require rules to ensure that the power is not capable of being arbitrarily exercised in circumstances which do not justify its exercise.”

Mr Seymour recognised the impact of a low arrest rate on public perception and previously recommended that the PSNI should place in the public domain an explanation of why the arrest rates following a JSA or TACT search are so low. This ties in with other recommendations made by Mr Seymour in previous years regarding improving the transparency around use of stop and search and with the commentary made previously from the children and young people’s sector regarding the negative impact of stop and search on confidence in policing.

However, the previous Chief Constable advised the Board in June 2019 that in response to the increasing number of drugs deaths since 2009, the PSNI “*prioritised enforcement activity in respect of illegal drugs*”, including the exercise of stop and search powers under the Misuse of Drugs Act.

Recommendation 7

Within 6 months of the publication of this Human Rights Annual Report, the PSNI should publish the criteria used by chief officers to decide which stop and search tools officers should use, ensure that they are human rights compliant and that they will be effective. Thereafter, the PSNI should analyse the activity after the event to determine whether the increase/decrease in deployments had

an impact on crime levels or other objectives. The PSNI should provide a written briefing to the Performance Committee on the findings and on the steps taken, or to be taken, within 12 months of the publication of this Human Rights Annual Report.

Monitoring of Community Background

The Board's thematic review on the police use of powers to stop and search and stop and question made 11 recommendations for the PSNI to consider; of which 10 were accepted and have since been implemented. The one outstanding recommendation (Recommendation 7) is in relation to the recording of the community background of the individuals who PSNI have been stopped and questioned/searched under the police powers within TACT and JSA. It states:

The PSNI should as soon as reasonably practicable but in any event within 3 months of the publication of this thematic review consider how to include within its recording form the community background of all persons stopped and searched under sections 43, 43A or 47A TACT and all persons stopped and searched or questioned under section 21 and 24 JSA. As soon as that has been completed the PSNI should present to the Performance Committee, for discussion, its proposal for monitoring community background. At the conclusion of the first 12 months of recording community background, the statistics should be analysed. Within 3 months of that analysis the PSNI should present its analysis of the statistics to the Performance Committee and thereafter publish the statistics in its statistical reports.⁶⁹

Issues around the implementation of this recommendation have been considered at length by the Policing Board and PSNI. Pilot schemes have been tested, receiving disappointing outcomes, and in March 2017 an academic was commissioned to advise on alternative methods. PSNI have advised that they do not have a statutory power to compel a person to provide details of their community background.

Ramsey case

⁶⁹ Northern Ireland Policing Board, Human Rights Thematic Review on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007, available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/stop-and-search-thematic-review-15-october-2013.pdf>

In the case of Ramsey (Court of Appeal, 25 February 2020) the stop and search provisions of the JSA were subject to challenge. This Act allows a police officer (if there is an authorisation in place⁷⁰) to stop and question and stop and search for munitions and transmitters without the requirement and protection that the officer has reasonable suspicion before exercising these powers.⁷¹ The case has a complex history but the Court of Appeal resolved two issues of dispute.

First, the PSNI argued that after a search of a person using this power it was only necessary to record the fact that there was an authorisation in place. The Code of Practice for the provision states:

8.75 The following information must always be included in the record of a search even if the person does not wish to provide any personal details:

(v) the basis for the use of the power, including any necessary authorisation that has been given

The Court of Appeal decided that the police officer must also record the grounds for the search...

52. First, the requirement for the officer to record the basis for the search is itself a discipline in ensuring that the officer acts in accordance with the requirements of the Code. The record need not be extensive comprising at most a sentence or two but providing sufficient information to explain why there was a basis...

... the powers should be used only if it is proportionate and necessary. Proportionality requires the powers to be used only where justified by the particular situation. Effective monitoring and supervision can only be achieved if there is a record for the basis of the search.

⁷⁰ Authorisations continue to be in place for the whole of Northern Ireland and are renewed for each policing district every two weeks.

⁷¹ See the Policing Board's review of stop and search, PSNI Use of Stop and Search Powers, May 2019 <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/committee-review-psni-use-of-stop-and-search-powers.pdf>

Secondly, the Court decided that the community background of those stopped using this power need to be monitored by PSNI.

54. The second issue in dispute is the requirement to monitor community background. Paragraphs 5.6 to 5.8 of the Code are entitled “Avoiding Discrimination”. Those paragraphs incorporate by reference the types of discrimination set out in sections 75 and 76 of the Northern Ireland Act 1998. There is a particular focus on the risk of profiling people from certain ethnicities or religious backgrounds and consequently losing the confidence of communities...

58. The evaluation of the pilot by the PSNI has tended to suggest that the best option may be assessment by the individual police officers of community background. We understand that such an option has not yet been implemented but we are satisfied that the requirements of the Code are that some proportionate measure is put in place in order to ensure that there can be adequate monitoring and supervision of the community background of those being stopped and searched.’

Following this judgment, the Board look forward to engaging with PSNI over its proposal for monitoring community background and the implementation of Recommendation 7 from the Board’s thematic review. However, in light of recent developments in respect of a PSNI Service Procedure for stop and search, the Board additionally recommends that;

Recommendation 8

The PSNI should draft a Service Instruction or add to its current draft Service Instruction on Stop and Search setting out how police officers should record the basis for their stops and searches using Terrorism Act 2000 and Justice and Security (Northern Ireland) Act 2007 powers and how they should ascertain and record the community background of those subject to this power.

Assessing Effectiveness/ Arrest rate

The Committee welcome the PSNI's revised formatting of the stop and search statistical bulletins which now provide additional information in respect of outcomes and national comparisons.⁷² The latest PSNI bulletin reports that, between 1st April 2018 and 31st March 2019, PSNI had an overall arrest rate of 9%, comparing to 15% of stop and searches leading to an arrest in England and Wales during the same period.⁷³ The PSNI's arrest rate during 2018/19 was the second lowest figure recorded by police services across the UK. While the significant reduction in the use of JSA powers during 2019/20 is welcomed (use of section 21 and section 24 decreased by 286 and 1,217 respectively), it would have expected that with fewer stops and searches the effectiveness rate would go up rather than remain at 1%.

Stop and searches under the Misuse of Drugs Act (accounting for 65% of all PSNI stop and searches during 2019/20) marginally decreased by 586 during 2019/20. It is concerning that such stops only led to an arrest in 6% of cases, the same figure as the previous year. In England and Wales during 2018/19, the most common reason for carrying out a stop and search was also on suspicion of drug possession (61%), and 47% of such searches led to a subsequent arrest.

Members submitted a question to the Chief Constable at the Board meeting on 6 June 2019 in relation to this issue. The response outlined that they had recently "*prioritised enforcement activity in respect of illegal drugs*" in response to the increasing number of drug deaths over the last ten years. Further stating that "*PSNI do not measure arrest as an effective outcome as a result of stop and search... the primary purpose of stop and search is to enable officers to allay or confirm their suspicions without exercising their power of arrest*".

In 2017 the College of Policing published a study exploring the relationship stop and search had with crime at a borough level in the Metropolitan Police over a 10-year period. Overall it found "*only limited evidence of stop and search having had a deterrent effect on crime*" and advised that "*it is important not to overstate the benefits of stop and search and present it as a panacea to crime reduction, particularly at a*

⁷² <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/stop-and-search-statistics/2019/psni-stop-and-search-report-1920.pdf>

⁷³ For comparability, here the NI figure excludes stops under JSA Section 21 and 24.

*force or borough level.*⁷⁴ Furthermore, the College of Policing noted that ‘reasonable suspicion’ searches are supposed to be investigative in nature, reminding that “*from a legal perspective, as every search must have grounds and be justified in and of itself, the use of the power cannot be justified solely – or even primarily – in terms of any overall effect on crime at a particular time or place*”.⁷⁵ While concluding that ‘reasonable suspicion’ stop and search should be principally assessed in terms of its success as an investigative power, the report noted that there is much debate about the criteria against which searches should be evaluated as ‘successful’. For example: arrests only, arrests and other criminal justice outcomes, allayed suspicions, consistency between suspected and found item.

The arrest rate following the use of the ‘without suspicion’ stop and search power under section 24 JSA has typically remained at 2% or less. The Independent Reviewer of JSA has frequently commented on the reasons for the low arrest rate, reminding that “*the purpose of the power is not necessarily to trigger arrest and prosecution...it is primarily a preventative power*”.⁷⁶ Mr Seymour considers that the effectiveness of PSNI’s use of the power cannot be judge solely in terms of arrest rate. He notes PSNI’s explanation that arrest rate does not take account of circumstances where a police officer uses other means of disposal such as advice and guidance where an object is found. Nevertheless, Mr Seymour acknowledges that consistently low arrest rates have a damaging impact upon community confidence and recommended that PSNI should place an explanation in the public domain of why the arrest rates following a JSA or TACT search are so low. The FAQ section of their Stop and Search webpage was therefore updated to highlight the preventative nature of these stop and search powers which do not require reasonable suspicion and are often intelligence-led, however concerns remain.

Finally, it is problematic in the context of Article 8 (the right to privacy) if the primary justification for a power of search of a particular individual is not based on anything

⁷⁴ Paul Quinton, College of Policing, Ben Bradford, University of Oxford, Matteo Tiratelli, University of Manchester ‘*Does more stop and search mean less crime? Analysis of Metropolitan Police Service panel data, 2004–14*’ https://whatworks.college.police.uk/Research/Documents/SS_and_crime_report.pdf

⁷⁵ *ibid* 29

⁷⁶ Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Eighth Report: 1 August 2014 – 31 July 2015, Mr Seymour CB, February 2016

about the person who is subject to the power but is only directed towards him or her to discourage the activities of others.

The use of stop and search raises important questions of human rights, privacy and community alienation but, separately, whether stop and search, particularly not well-focused stop and search, is an effective use of police time which might be better used for one of the many other priorities of the PSNI. This lack of effectiveness also undermines the justification.

Recommendation 9

PSNI should set out what indicators they use to assess the effectiveness of their use of each of the stop and search powers compared with other kinds of police officer deployments.

PUBLIC ORDER

There are a series of annual regional debriefing exercises for Bronze Commanders looking back over the previous year – particularly for the events in June and July. These are facilitated by district trainers using a set debriefing protocol and script. The Human Rights Advisor attended one of these in October 2019. It was reported that one of the key issues over the last year has been dealing with the bonfires. Discussion on the substance concerned the role of police, role of local authorities and contractors and the difficulty of dismantling bonfires whilst people are sitting on top of them.

The majority of the discussion concerned feedback on logistics. In particular, the need to extract Bronze Commanders for the public order events, and the need for trained land-rover drivers, AEP experts etc. Additional concerns were ensuring that officers' training was up to date. There was some concern about Bronze Commanders being deployed without much notice, resulting in a lack of local knowledge and no time to make plans. The lack of advance planning could result in a lack of confidence, reluctance to take a more passive role and the inability to embed human rights into the plan.

Recommendation 10

The PSNI should share in April each year its overall strategy for dealing with the events over the coming summer with the Policing Board.

Apprentice Boys of Derry Band and the Events of 10th August 2019

On 10th August 2019, the Apprentice Boys of Derry carried out their annual parade through Derry/Londonderry.⁷⁷ On that day the Clyde Valley Flute Band paraded in a uniform which included a Parachute Regiment emblem and the letter 'F' - a reference to the soldier being prosecuted for murder in Derry/Londonderry on 'Bloody Sunday' in 1972. This was assessed by the PSNI's officers as a potentially provocative act that was likely to lead to a serious breach of the peace, contrary to Article 19(1) of the Public Order (Northern Ireland) Order 1987.⁷⁸ This offence is committed either if the provocation is intentional or if it "is likely to be occasioned". As a result, the officers prevented the Band from continuing as part of the annual parade. There were then a series of unsuccessful negotiations with the organisers and others. During these negotiations pressure began to build from other bands behind the Band who were unable to join the parade and the PSNI feared that the situation would lead to violence. The PSNI therefore allowed the Band to join the parade, but decided to flank the band with police officers dressed in high visibility uniform to ensure the safety of the Band and to provide a visible barrier between the Band and the local community.

Much later, the bus transporting the Band away from the venue was stopped by the PSNI and officers asked the members of the Band (which included a number of young people) to give them their names and addresses in order that consideration could be

⁷⁷ This description of the facts is taken from the Police Scotland review report and the documents provided to the Human Rights Advisor by the PSNI.

⁷⁸ "Provocative conduct in public place or at public meeting or procession

19. (1) A person who in any public place or at or in relation to any public meeting or public procession—

(a) uses threatening, abusive or insulting words or behaviour; or

(b) displays anything or does any act; or

(c) being the owner or occupier of any land or premises, causes or permits anything to be displayed or any act to be done thereon,

with intent to provoke a breach of the peace or by which a breach of the peace or public disorder is likely to be occasioned (whether immediately or at any time afterwards) shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both."

given to investigating and, possibly, prosecuting them for the Article 19 offence. The Band members refused to give their names and negotiations continued for over two hours. Eventually the bus was released after three of the organisers had supplied the PSNI with their own names and addresses.

Some weeks later the Chief Constable asked Police Scotland to review these events and the actions of PSNI and that written report was provided to the Human Rights Advisor. Following discussion at the Performance Committee, the Human Rights Advisor was given access to the PSNI's background documents for this event, the same copy documents which, earlier, had been previously provided by the PSNI to the Police Scotland reviewers.⁷⁹

The Gold Strategy for this event set out the proper human rights issues to be taken into account and these issues were set out in more detail in the Silver Tactical Plan and the Bronze Deployment Plan. These plans took account of the possibility that Parachute Regiment insignia and the use of the letter 'F' was likely to be displayed and had plans to deal with this eventuality. Those strategy documents, and the additional Criminal Justice Strategy, set out the relevant law and how this might be deployed.

The PSNI leadership and senior officers, in the planning of the event and during the operation of the event, appear to have taken proper account of the relevant human rights considerations.⁸⁰

The likely provocation (and resulting public order problems) was assessed by PSNI to be significant. The police have a duty under the Police (Northern Ireland), section 32 Act to:

⁷⁹ The reviewers for Police Scotland also interviewed the key PSNI officers and reviewed those officers hand-written notes.

⁸⁰ The Human Rights Advisor cannot comment on the specific actions of any individual police officer as he was not present at the event, has not viewed any Body Worn Video, CCTV material or media or personal recordings. He has not read any complaints that might have been made, contemporaneous accounts by those present or reports or materials created for the prosecution of any alleged offenders.

(a) to protect life and property; (b) to preserve order; (c) to prevent the commission of offences”⁸¹

Different people might take different positions as to whether the PSNI should have allowed the Band to continue (and the possible breach of the law) at all but it needs to be noted that the action of the police in flanking the Clyde Valley Flute Band considerably reduced likelihood of any actual violence or of a breach of the peace. The PSNI had the power in domestic law to prevent the band from proceeding (Public Order (Northern Ireland) Order 1987.⁸²

Article 11 of the ECHR protects the right to “peaceful assembly” and Article 10 protects the right to freedom of expression. The latter is likely to protect the expression of support for Soldier F and the Parachute Regiment. However, these provisions do not cover demonstrations where the participants have violent intentions:

The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society.”⁸³

In deciding on the lawfulness of the actions of the police the courts would obviously take into account the circumstances of those expressions of support. Should the decision by PSNI to prevent the Band from marching at all have been challenged, the courts would have probably given the police some leeway.⁸⁴ However, given the arrangements that were put in place, if challenged in the courts alleging violation of the Human Rights Act, those challenges would probably fail.⁸⁵

⁸¹ And similar kinds of duties under the ECHR, Articles 2 and 3. Although note *E v Chief Constable of the Royal Ulster Constabulary* [2008] UKHL 66 where a claim by a parent in relation to the policing of the Holy Cross School and Article 3 failed in the House of Lords and in the ECtHR, the case of *E.F. and P.F. v UK* (2010) was declared inadmissible (manifestly ill-founded).

⁸² See also the common law power to prevent a breach of the peace, *R (Laporte) v Chief Constable of Gloucester Constabulary*, [2007] 2 AC 105, House of Lords and *Austin v Commissioner of Police* [2008], House of Lords.

⁸³ Para 23, Guide on Article 11 of the European Convention on Human Rights, (2019) European Court of Human Rights, *Steel and others v UK* (1998) and *Austin v UK* (2012).

⁸⁴ *Tweed, Re Judicial Review* [2009] NICA 13.

⁸⁵ It may be suggested that PSNI acted inconsistently in that on earlier occasions they did not intervene to stop (or later seek the addresses of) those who were manifesting support for republican paramilitary organisations, but what is or is not operationally advisable depends a lot on the precise circumstances of each scenario.

There is a second question to be considered, the subsequent detention of those (including some young people) on the bus for over two hours. The police officers believed that the Band members had committed the offence of provocation by wearing the regalia, intending to parade in that regalia in Derry/Londonderry and that the consequence for public order, had they been able to go ahead without police “protection”, was likely to be significant. The provocation offence is an arrestable offence if it is not possible for police officers to ascertain names and addresses of the suspects. The police could therefore have arrested any of the people on the bus who they suspected of committing the offence and who refused to give them their names and addresses and processed them by taking them to a police station.⁸⁶ The action by the police on the day was therefore, arguably, a more measured response.

In order for this to be lawful under the ECHR, first, it would have to be lawful under the national law of Northern Ireland (see previous paragraph). Secondly, any detention would have to comply with the provisions of Article 5 of the ECHR. It is likely that the PSNI would argue that it constituted:

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;⁸⁷

or

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

Therefore it is likely that the actions of the police in deciding to detain the bus was compliant under the ECHR and Human Rights Act although the police would not have breached the ECHR if they had, instead, allowed the bus to continue on its way.⁸⁸

⁸⁶ The Supreme Court reminded the PSNI in *DB v Chief Constable of the PSNI* [2017] UKSC 7 that they should be aware of all the powers at their disposal when dealing with a potentially unlawful parade.

⁸⁷ *Vasileva v. Denmark*, and *S., V. and A. v. Denmark*.

⁸⁸ Obviously the Human Rights Advisor cannot comment on the individual actions of police officers or the lawfulness of how any individual (including the young people) on the bus was treated.

CHAPTER 4 - COMPLAINTS, DISCIPLINE & CODE OF ETHICS

Under section 3(3)(c)(i) of the Police (Northern Ireland) Act 2000, the Board must keep itself informed of complaints and disciplinary proceedings brought in respect of police officers, and to monitor any trends or patterns emerging. This work is undertaken on behalf of the Board, by the Performance Committee which oversees the extent to which the service is respecting professional standards of police conduct.

A Professional Standards Monitoring Framework was developed in 2011 which provides the Committee with a structure to undertake their monitoring role and to address broader quality of service concerns identified by Members. In accordance with the Framework, the PSNI provides the Committee with a range of data regarding professional standards. This includes: PSNI Anti-Corruption & Vetting Branch and Discipline Branch Annual Report, breaches of the Code of Ethics, suspensions and repositioning, police misconduct matters of complaints and allegations, details of statute barred cases, officers receiving criminal convictions, Chief Constable's referrals from PSNI to the OPONI and information on police staff discipline. The Committee also considers the PSNI Policy Evaluation Group (PEG) Annual Report which sets out learning identified from OPONI policy recommendations. The Committee then reviews information from OPONI regarding trends and patterns in complaints and allegations made to OPONI by members of the public.

This information is used by the Board to challenge PSNI regarding the organisation's performance and to seek further information from the police or OPONI on any identifiable areas of concern. The Committee cross-refers the key findings to other monitored areas of police performance (for example, training, policy and operations) in order to identify common areas of concern and ensure that lessons are learned, and best practice is promoted across the service. The Board's Human Rights Advisor also reviews all relevant reports, research and recommendations and, where it is considered that a legitimate issue relating to the PSNI's compliance with the Human Rights Act 1998 arises, the Advisor assesses the PSNI's response to it and reports this back to the Committee.

At the meeting on 13 June 2019 Members discussed the most recent annual report produced by PSNI Professional Standards (1 April 2018 to 31 March 2019). The Committee then met with senior officials from OPONI at the meeting on 12 September 2019 to discuss their annual statistical bulletin covering the period 1 April 2018 to 31 March 2019. Below is a summary of the key findings from both organisations during the 2018/19 and 2019/20 financial years.

PSNI Professional Standards

PSNI Professional Standards is comprised of two sub-branches, Discipline and Anti-Corruption & Vetting, with a joint purpose, *“To engender pride and trust in the integrity of the Police Service of Northern Ireland through the prevention and detection of corruption, dishonesty or unethical behaviour”*. The Anti-Corruption & Vetting Branch has a duty to prevent and detect wrongdoing and corruption by members of the organisation whilst ‘off-duty’. The Discipline Branch is responsible for providing guidance to Districts and Departments in respect of disciplinary matters to ensure that consistent standards are applied. It can also initiate its own criminal or misconduct investigations and refer matters to formal misconduct hearings.

In accordance with PSNI governance arrangements, the Discipline Branch and Anti-Corruption & Vetting Branch produce a joint annual report for submission to the PSNI Audit and Risk Committee. The report is also provided to the Performance Committee and the Board’s Human Rights Advisor. The key findings for 2018/19 are set out under their respective headings below:

- Breaches of the Code of Ethics

During 2018/19 there were 375 potential breaches of the Code of Ethics, which is an increase of 13 in comparison to 2017/18; however in 2019/20 there were 336 potential breaches. The most common breaches related to the following Articles within the Code: Article 7 - Integrity (34.4% in 2018/19) and 33.3% 2019/20) which includes matters involving criminal offences such as assault, motoring and domestic offences, substance misuse and theft/fraud; Article 1 - Professional Duty (26.9% in 2018/19) and (23.5% in 2019/20) which relates to issues involving the accuracy of records, inappropriate behaviour/language,

business interest irregularity, negligent discharge and procedural failures; and Article 2 - Police Investigation (18.9% in 2018/19) and (18.5% in 2019/20) relating to issues such as failure to investigate, failure to update and unprofessional comments.

- Investigations

Where a matter requires a formal investigation, it will either be a criminal investigation (conducted by ACU or Discipline Branch or at District level) or a misconduct only investigation (conducted by Discipline Branch). There were 44 criminal investigations in 2018/19, with the same recorded in 2019/20. The most common type of Criminal District⁸⁹ investigation initiated during 2018/19 and 2019/20 was assault during domestic or sexual offences, which has consistently been one of the highest categories for criminal files over the last five years. Cases relating to breaches of data protection have also been consistently high, averaging 14 cases over the past years.

- Suspension & Repositioning

There were 17 new suspensions during 2018/19 and 14 new suspensions in 2019/20. Of these 14 new suspensions, ten are ongoing. There are currently 20 officers on suspension compared to 21 in 2018/19. Nine of the 20 officers on suspension have been suspended for more than a year. Nine are suspended for on-duty conduct and ten for off-duty. Repositioning is an alternative to suspension pending the outcome of an investigation. During 2018/19 37 officers were repositioned with 27 repositioned in 2019/20.

Following PSNI's attendance at the Committee meeting on 13 June 2019, Members requested further information regarding the annual cost to the service in relation to suspended officers pending the conclusion of the relevant disciplinary procedures. It was advised that during 2018/19 this figure was £1,233,218 and covered basic salary, allowances, pension and national insurance. PSNI noted in their response that the number of suspended officers

⁸⁹ Criminal District cases are investigated within a District but are shadowed by a Professional Standards Investigator.

tends to be at a fairly consistent level each year and this could reasonably be considered as an average figure for the annual cost to the organisation. Following receipt of PSNI's response, the Committee submitted a Question to the Chief Constable in October 2019 in order to raise further concerns.

The Committee acknowledged that officers are entitled to a timely completion of disciplinary proceedings however Members also highlighted that there is an onus on Senior Management to demonstrate it is using finite public funds efficiently and effectively, particularly at a time when PSNI leadership is seeking additional resources. Members therefore requested the Chief Constable to advise of the steps taken (or being considered) to expedite disciplinary proceedings, so that the dual objectives of fair process and effective stewardship of public money are achieved by reducing the current cost of funding officers who are suspended.

In his response, the Chief Constable emphasised that any allegation of wrongdoing by any officer is taken extremely seriously and must be thoroughly investigated by the OPONI or Professional Standards as appropriate. This often results in officers being suspended on full pay or repositioned pending the outcome of an investigation. Such decisions follow due process and are made in line with the Police Conduct Regulations and associated Department of Justice Guidance. Gross Misconduct is defined as a breach of the Code of Ethics so serious that if proven dismissal would be justified. It is only in such serious circumstances that suspension is a consideration.

The Chief Constable provided assurance that in every case in which an officer is suspended there is a review of both the reasons for the suspension and the progress of the investigation every four weeks or earlier if material fresh information comes to light. It was also advised that, in accordance with the aim of the Police Conduct Regulations (NI) 2016 to provide a better opportunity than the former regulations to achieve timely resolution, Professional Standards Department have revised their approach to case management. It is hoped that this will facilitate the expedition of proceedings and reduce the overall time taken to resolve cases.

- Misconduct Proceedings

During 2018/19 there were 14 misconduct hearings, of which three were as a result of OPONI investigations and resulted in six officers either being dismissed with notice or required to resign. In 2019/20 the number of misconduct hearings reduced to 7. There were 31 misconduct meetings, of which 18 were as a result of OPONI investigations and resulted in five officers receiving Final Written Warnings (highest sanction available). In 2019/20 a total of 46 misconduct meetings took place, of which 24 were as a result of OPONI investigations and resulted in six officers receiving Final Written Warnings.

- Complaints & Allegations

There was a marginal increase in the total number of complaints in 2018/19 (2,627) for the first time in six years. However, OPONI indicate this increase may be attributable to a change in recording practices (discussed in more detail below). In 2019/20 there was a 5% reduction in the total number of complaints, resulting in the lowest level since the OPONI was formed. The number of allegations also fell, with a reduction of 5% in 2018/19 and a further 6% in 2019/20, the lowest level since OPONI commenced allegation-based recording. The main types of allegations continue to be in the following three categories: Oppressive Behaviour, Failure in Duty and Incivility.

The Office of the Police Ombudsman

The main function of OPONI is to provide an independent and impartial service for handling complaints about the conduct of police officers. OPONI investigates complaints from members of the public and issues referred to it by other public bodies. This not only includes police officers and 'designated civilians'⁹⁰ within the PSNI, but officers within the Northern Ireland Airport Constabulary and Belfast Harbour Police.

⁹⁰ 'Designated civilians' are those members of police support staff designated as an officer by the Chief Constable pursuant to section 30 of the Police (Northern Ireland) Act 2003 i.e. investigating officers, detention officers and escort officers.

OPONI can also investigate complaints about officials within the UK Border Force and officers from the National Crime Agency.

OPONI's work is critical for facilitating the Board's oversight of police professional standards and accountability. The collaboration of both organisations in monitoring the data arising from police complaints promotes amelioration of police policy and practices through the identification of concerning trends. Senior officials from OPONI attended the Committee meeting on 12 September 2019 to discuss their annual statistical bulletin covering the period 1 April 2018 to 31 March 2019.⁹¹ During this period the number of complaints received, and matters referred for investigation by OPONI, was 2,627. This was the first time since, 2013/14 where the Office had received an increase (2%) in complaints from the previous year. However, OPONI explained that this increase is attributable to a recent change in recording practices for notifications received from the PSNI. For 2019/20 this figure is 2,522 which is a 5% reduction from 2018/19.

It was noted that nearly two fifths of complaints dealt with by OPONI during 2018/19 and 2019/20 were subject to a full investigation and in 21% of these complaints in 2018/19 and 13% in 2019/20, evidence was found to substantiate all or part of the complaint or identified another concern during the investigation. On eight occasions during 2018/19 OPONI recommended that the Director of Public Prosecutions should prosecute an officer, this saw an increase to 20 occasions in 2019/20. On 134 occasions OPONI recommended that a police officer should receive a disciplinary sanction or a performance action by PSNI PSD, this increased to 152 in 2019/20. At the Committee, Members and OPONI officials considered an information gap regarding how many officers were convicted or acquitted in relation to complaints investigated by OPONI. It was noted that there is difficulty in tracking specific cases due to the time lag between the conclusions of OPONI investigation and the PPS issuing a final decision.

Nevertheless, Board Members subsequently wrote to the PPS to request some general information which would provide insight into this discussion. The PPS advised

⁹¹ The Office of the Police Ombudsman for Northern Ireland, Annual Statistical Bulletin 2018/19 <https://www.policeombudsman.org/getmedia/2b3690c3-df8d-40d5-9250-d314a0c0a7d1/Annual-Statistical-Bulletin-2018-19.pdf>

that, during 2018/19, OPONI submitted 117 files to the PPS, referring to 216 officers. Of the 216 officers, OPONI recommended prosecution in respect of 13 and no prosecution for 203. At the time of writing, the PPS advised that prosecutorial decisions had been issued by the PPS in respect of 204 of the 216 officers - 6 for prosecution and 198 not to prosecute. Decisions were pending for the remaining 12. Of the 6 individuals prosecuted, only 1 has been dealt with at court to date (found guilty of at least one offence). Proceedings in respect of 5 officers are ongoing. It was agreed by the Committee that in briefings going forward, Board officials will seek this information annually to form part of the briefings on the Professional Standards Monitoring Framework.

At the Committee, OPONI also provided Members with a general overview of their ongoing work, including: the mechanisms used for measuring public confidence and awareness of OPONI; the procedure, timeframes and threshold classifications of complaints (or other matters referred); and the number of engagement initiatives OPONI undertake in relation to children and young people (including the use of social media, the development of a video, engagement with schools and an optional GCSE 'Learning for Life and Work' module). Members wish to acknowledge and welcome an upcoming report by OPONI which will examine the impact of BWV on police complaints. It was advised that the report considers the differences in the volume of complaints and allegations made before and after the advent of BWV, as well as the number and types of complaints that rely on BWV evidence, and provides a general commentary on what OPONI investigators think of PSNI's use of BWV. Members look forward to receiving this report once available and will endeavour to engage with the PSNI in respect of its key findings.

Regulation 20 Reports

Under section 55 of the Police (NI) Act 2000, OPONI may investigate matters about which no complaint has been made by a member of the public ("non-complaint matters"). Such matters can be investigated by OPONI of her own volition or as a result of a referral by the Board, the Department of Justice, the Secretary of State, the Director of Public Prosecutions or the Chief Constable, in respect of any matter indicating criminality or misconduct by a police officer. The Chief Constable must refer

all discharges of a firearm, an Attenuating Energy Projectile (AEP) or Taser to the OPONI for investigation. Any incident in which a person dies either in police custody or shortly following police contact (regardless of whether it is suspected that there was wrongdoing on the part of the police) must also be referred. At the conclusion of an OPONI investigation into non-complaint matters a report, known as a Regulation 20 report, is sent to the Department of Justice, the Policing Board and the Chief Constable. The report outlines the background to the incident under investigation, OPONI's findings and, where appropriate, recommendations for the Chief Constable.

Since the beginning of 2019, the Board received 17 Regulation 20 reports from OPONI which related to matters such as: discharge of PAVA spray, Taser guns and AEP rounds;⁹² suspected misconduct of an officer during arrest;⁹³ death following police contact;⁹⁴ alleged theft from police station by a police officer;⁹⁵ suspected data protection breaches;⁹⁶ alleged misuse of police vehicles;⁹⁷ alleged failure to investigate incidents;⁹⁸ alleged failures during investigation;⁹⁹ an allegation of officer perverting the course of justice;¹⁰⁰ and death of a member of the public after a road traffic collision.¹⁰¹ If OPONI considers it in the public interest she may publish a press statement setting out her findings. A Regulation 20 report is not published as a matter of course, however the Performance Committee receives confidential copies of Regulation 20 reports and monitors any adverse findings. The section below sets out the oversight procedure for policy recommendations made to the PSNI by OPONI.

Policy Recommendations made to the PSNI by OPONI

⁹² Relating to one incident. OPONI found officers acted with the intent to protect life and the discharge of PAVA spray, Taser guns and AEP rounds was reasonable, proportionate and in compliance with legislation. OPONI made no recommendations.

⁹³ Relating to two incidents. Resulted in a misconduct sanction and a performance sanction.

⁹⁴ Resulting in a misconduct sanction against arresting officers and three policy recommendations.

⁹⁵ No policy or disciplinary recommendations required as police officer resigned.

⁹⁶ Relating to two incidents. Resulted in a disciplinary sanction against an officer and two policy recommendations to PSNI.

⁹⁷ Relating to two incidents. Resulted in a disciplinary sanction against an officer.

⁹⁸ Relating to three incidents. No evidence was found in two cases and in the third, no disciplinary action was required as police officer resigned.

⁹⁹ Resulted in disciplinary sanctions against an officer and 3 policy recommendations.

¹⁰⁰ OPONI forwarded file to PPS who directed no prosecutions. Three officers involved have either received or pending disciplinary sanctions.

¹⁰¹ Resulted in 3 recommendations for disciplinary action, 2 of which the PSNI did not accept however they did implement sanctions against one officer. The incident also resulted in 3 policy recommendations for the PSNI, 2 of which have been accepted and implemented, while one was considered already in place.

OPONI may make policy and/or disciplinary recommendations to the PSNI following an investigation into a complaint against a police officer or any other matter referred to OPONI under the Police (Northern Ireland) Act 1998.¹⁰² In accordance with a recommendation in the Board's Human Rights Annual Report 2013, PSNI established a Policy Evaluation Group (PEG) specifically for the purpose of considering the implementation of OPONI policy recommendations. The PEG meets annually and is attended by representatives from OPONI, PSNI, HMIC, CJINI and a Board Official attending in an observer capacity. During the meetings attendees consider the management of policy recommendations made by OPONI, which are categorised as either 'Strategic, Operational or Areas for Minor Improvement (AFMI)'. Some of the key findings from the PEG Annual Report 2018/19 are summarised below.

In 2018/19 PSNI received the lowest number of policy recommendations from OPONI since recording began. PSNI received 11 policy recommendations arising from eight investigations and all recommendations were classed as operational in nature. This continues the downward trend seen across the last four years, from 70 policy recommendations received in 2014/15, to 57 in 2015/16, 47 in 2016/17 and 40 in 2017/18. Investigations resulting in policy recommendations also reduced in 2018/19 when compared to the previous three years, with the 8 investigations in 2018 comparing to 39 in 2014/15. There have been 554 policy recommendations made by OPONI since 2008, these most commonly relate to custody (77), police investigations (46) and evidence & property handling (34).

Out of the 11 policy recommendations in 2018/19, three related to such matters as the recording and audit trails associated with the return of property to detained persons and the procedures associated with the PSNI's preparation of PPS files. PSNI advised that they have not been implemented as adequate procedures were considered by the police to be already in place. As OPONI summarise in their 2018/19 annual statistical bulletin, PSNI's response to the remaining eight recommendations is ongoing, these include such matters as,

¹⁰² [Police \(Northern Ireland\) Act 1998, Section 55](#) sets out matters which may be referred to OPONI by the Board, the Department of Justice, the Secretary of State or the Chief Constable.

...consistency in procedures at different Custody Suites; current procedures and training in respect of dealing with traffic incidents on motorways; the recommendation to review and update a Service Procedure relating to police response to stalking and harassment; the recommendation to review the processes associated with the completion and updating of search records and the recommendation to provide training and arrange for any necessary process/guidance amendment in respect of a particular police process.¹⁰³

PSNI will provide an update in respect of all outstanding recommendations at the next PEG meeting in summer 2020.

PSNI have advised that during 2018/19 PSNI Professional Standards developed a database of all policy recommendations made by OPONI which enables the extraction of recommendations relating to different topics. This is utilised to inform policy writers on previously identified issues, for example in 2018/19 information was provided to policy makers and senior personnel in relation to the managements of threats to life. The Police College were also provided with information on recommendations relating to deaths in custody to assist them in developing lesson plans.

Code of Ethics Review

Under section 52 of the Police (Northern Ireland) Act 2000, the Board is required to issue, and from time to time revise, a PSNI Code of Ethics for the purpose of laying down standards of conduct and practice for police officers and making them aware of the rights and obligations arising under the Human Rights Act 1998. All serving police officers within the PSNI are required to comply with the Code and where an allegation of misconduct against a police officer is made, the standards against which the officer will be measured are those contained within the Code. The Board agreed on 6 February 2020 that the Performance Committee, guided by the Board's Human Rights Advisor, should oversee a review of the Code of Ethics to ensure it adequately reflects and supports the policy, procedure and decision-making of officers in the contemporary policing environment.

¹⁰³ OPONI, Annual Statistical Bulletin 2018/19, p.24

Several meetings have taken place between the Human Rights Advisor, Board officials and the PSNI officers responsible for progressing this review. Consideration has been given to recent changes in the legal and social environment, including the use of new technologies and emerging integrity risks. In accordance with section 52 of the Police (Northern Ireland) Act 2000, PSNI submitted a draft revised Code to the Board which was considered at the Committee on 12 March 2020. Following the discussion, Members wrote to PSNI to pursue a number of concerns regarding formatting, terminology and the accessibility of the ethical values framing the decisions and actions of PSNI officers. Before issuing or revising the Code, the Board must consult with a number of named organisations in s.52(5).¹⁰⁴ Following this, the Board may make further amendments to the draft Code as it may determine, after consultation with the Chief Constable. Therefore, any draft Code must proceed through a number of stages before it is finalised and adopted. This work will continue to progress in 2020 with a view to completing before the end of the year.

¹⁰⁴ This includes: the Police Association, the Secretary of State, the Office of the Police Ombudsman, the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and any other person or body appearing to the Board to have an interest in the matter.

CHAPTER 5 - USE OF FORCE

The use of force by police officers engages in a direct and fundamental way the rights protected by the ECHR such as Article 2 (the right to life); Article 3 (the right not to be subjected to torture, inhuman or degrading treatment or punishment) and Article 8 (the right to respect for private and family life). Police officers have the authority to use reasonable force in order to defend themselves or another person, to effect an arrest, to secure and preserve evidence or to uphold the peace, but any such use must be justified on each and every occasion. Consideration must always be given to whether there is a viable alternative to the use of force.

Furthermore, Article 4 of the PSNI Code of Ethics, which draws upon the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states “Police officers, in carrying out their duties, shall as far as possible apply non-violent methods before resorting to any use of force. Any use of force shall be the minimum appropriate in the circumstances and shall reflect a graduated and flexible response to the threat. Police officers may use force only if other means remain ineffective or have no realistic chance of achieving the intended result”.

All PSNI decision making, including the decision to use force, is taken in accordance with the National Police Chiefs Council (NPCC) and the National Decision Model (NDM). The NDM is an established approach to managing conflict and it can be applied to spontaneous incidents or planned operations, by an individual or a team of people. The NDM has a central statement of mission and values which recognises the need to protect and respect the human rights of all, surrounded by 5 key steps which should be continually assessed as a situation develops: (i) gather information and intelligence; (ii) assess threat and risk and develop a working strategy; (iii) consider powers and policy; (iv) identify options and contingencies; and (iv) take action and review what happened. Any tactical option chosen must be proportionate to the threat faced in any set of circumstances, which includes any decision to use force, be it through use of hands-on restraint techniques or use of a weapon. Which can encompass the physical, moral and psychological integrity of a person: *Botta v Italy* 26 EHRR 241.

The PSNI has a number of technologies at its disposal including CS Spray, PAVA irritant spray, Water Cannon, Taser (Conductive Energy Device or CED) and Attenuating Energy Projectiles (AEPs). Use of such weapons is not incompatible with the ECHR provided strict guidelines are applied for use. In recognition of the very serious and potentially lethal effects of AEP, the threshold that must be met before AEP are used is that of absolute necessity (the test provided for in Article 2).

Before using any of the above, a police officer should identify him/herself and give a clear warning of the intent to use force affording sufficient time for the warning to be observed unless affording time would put the officer or another person at risk of death or serious harm. Even where the use of lethal or potentially lethal force is unavoidable the police must continue to exercise restraint in the use of that force, minimise damage and injury caused, render assistance and medical aid at the earliest opportunity and notify relatives or other persons if a person has been injured or killed.

Mechanisms are in place, both internally and externally, to ensure that PSNI is held to account for all uses of force by its officers. Any incident that involves the use of force by a police officer must be recorded in the police officer's notebook and reported to the relevant supervisor. Any such incident may be the subject of an OPONI investigation regardless of whether or not a complaint has been made. The OPONI will, in every case where death has occurred following contact with the police, investigate the death. Where a firearm, an AEP or a Taser has been discharged, the OPONI will investigate the incident. Where Taser has been drawn or aimed at a subject, but not discharged, the OPONI must be notified, but will usually investigate only if a complaint is made. At the conclusion of the OPONI investigation, a Regulation 20 report on the investigation is completed. The Board receives a copy of all Regulation 20 reports and considers any findings or recommendations, particularly to identify systemic or frequently occurring issues, contained within them.

Every police officer is responsible personally for his or her decision to use force. If it appears to the PSNI or to the OPONI that force may have been used unlawfully, the police officer involved will be subject to a criminal investigation and may be prosecuted. Obedience to the orders of a supervisor is no defence for unlawful use of

force if that police officer knew that the order to use force was unlawful and the officer had a reasonable opportunity to refuse to obey it. Responsibility lies, additionally, with the officer's supervisor who issued the unlawful order.

The use of force by police officers is reviewed regularly by PSNI. Any issues that arise are addressed by senior officers with whom the Board has a direct line of communication. Ultimately, the Chief Constable is accountable to the Board for all uses of force by the PSNI. It is an important element of oversight and accountability that officers using force record the use on an electronic use of force monitoring form. The following uses of force must be recorded on the electronic monitoring form and thereafter submitted in a report to the Committee for consideration: AEP; Baton; CS Irritant Spray; PAVA Irritant Spray; Personal Firearms; Police Dog; Taser; and Water Cannon.

PSNI collates the data captured on the electronic use of force monitoring forms and produces a six-monthly use of force report which is considered by the Performance Committee. The reports contain information such as frequency of use of each type of force, the date and location of use, the gender and age of person on whom the force was used and trend information. While a statistical report does not in itself measure PSNI human rights compliance when using force, the six monthly reports do provide the Committee with a broad overview of the use of force. Any issues identified are raised directly with PSNI's senior command team.

Police officers have the authority to use force in order to defend themselves or another person, to affect an arrest, to secure and preserve evidence or to uphold the peace, but any such use must be justified on each and every occasion. Consideration must always be given to whether there is a viable alternative to the use of force. Mechanisms are in place, both internally and externally, to ensure that PSNI is held to account for all uses of force by its officers. These are reviewed regularly by PSNI, the OPONI and the Board. Any issues identified during the reporting period continue to be raised directly with PSNI's senior command team. Police officers put themselves in harms way to protect victims and others and have to deal with difficult, violent and out of control people every day. Unfortunately, they sometimes have to use force. The Board's role and that of the Human Rights Advisor is to try to ensure that this use

of lawful force is proportionate and justified and one method of doing this to very closely scrutinise the evidence of the use of force every year and to try to assist the PSNI to keep it to a minimum. The most recent reports summarises uses of force reported by officers for incidents that occurred between 1st April 2015 and 31st March 2020. The table below compares uses of force across the same reporting period over the last five years.

Table 2: Police use of force between 1 April 2014 and 31 March 2019

Use of Force	2015/16	2016/17	2017/18	2018/19	2019/20
AEP Pointed	41	37	41	39	49
AEP Discharged	4	0	0	4	4
AEP Total	45	37	41	43	53
Baton Drawn Only	375	376	351	330	271
Baton Drawn & Used	183	162	154	162	117
Baton Total	558	538	505	492	388
CS Drawn (not sprayed)	176	166	178	219	186
CS Sprayed	209	187	195	199	172
CS Total	385	353	373	418	358
PAVA Drawn (not sprayed)	0	0	1	0	0
PAVA Sprayed	0	3	5	3	5
PAVA Total	0	3	6	3	5
Firearm Drawn or Pointed	358	431	499	520	505
Firearm Discharged	1	1	1	0	0
Firearm Total	359	432	500	520	505
Police Dog Used	116	75	225	165	244
CED Drawn(a)	177	246	311	377	317
CED Fired(b)	14	13	35	22	26
CED Total	191	259	346	399	343
Handcuffs / Limb Restraints	N/A	N/A	5,191	5,064	4,348
Unarmed Physical Tactics	N/A	N/A	5,954	6,537	7,189
Water Cannon Deployment	26	15	0	0	0
Water Cannon Used	4	0	0	0	0
Water Cannon Total	30	15	0	0	0

(a) Includes drawn, aimed, arced, red-dotted. (b) Includes drive-stun. (c) % change figures rounded to nearest integer.

Spit and Bite Guards were introduced by PSNI late in March 2020 in response to the Covid-19 emergency. These do constitute a use of force and there is more information about this in the Operations Chapter. The Human Rights Advisor will be undertaking a review of PSNI's response to the Covid-19 pandemic, which will include the temporary introduction of spit and bite guards, and will formally report to the Board.

Conductive Energy Device (Taser)

The Conductive Energy Device, or Taser as it is more commonly known, is a single shot weapon designed to temporarily incapacitate a subject through the use of an electric current, which temporarily interferes with the body's neuromuscular system. This is one of a range of tactical options available where there is violence or a threat of violence which may escalate to the point where the use of lethal force would be justified. If a Taser is drawn, aimed and/or red-dotted (at which stage a red dot laser pointer appears on the subject indicating where the Taser would hit) that must be reported, even if it is not subsequently discharged.

Use of CED fired increased from 22 uses in 2018/19 to 26 uses in 2019/20. The main reason officers gave for using a CED was to protect themselves. PSNI advised that a majority of these incidents relate to individuals armed with knives or other weapons who were threatening to self-harm. In addition, PSNI noted that mental health issues and the misuse of drugs and alcohol bring the potential for a much more violent crime. The volume of mental health-related incidents in 2018/19 was 20,197 which equates to approximately 57 incidents every day.

Police Dogs

All Police dogs are under the control of Operational Support Department and can be used for a variety of purposes. Force is recorded in respect of a dog in the following scenarios:

- When the dog is deployed to achieve control of an immediate threat to the handler, other officers, innocent persons or the dog itself, whether or not the dog bites or causes injury;

- When the dog is deployed to apprehend a fleeing offender/subject, whether or not it bites or causes injury;
- When the dog bites at the direction of the handler and there is no injury; and
- When the dog bites not at the direction of the handler and there is no injury.

As seen in Table 2, Police dog handlers reported using a police dog on 244 occasions against 254 members of the public between 1 April 2019 and 31 March 2020. Of the 254 persons involved in incidents in which the dog was used, 12 were bitten by the dog. The most common reasons for using a police dog was self-protection, public protection or to effect arrest.

Firearms

The Chief Constable has issued standing authority for all officers, so long as he or she has completed the necessary training, to be issued with a personal issue firearm. The PSNI have stated that this standing authority is kept under regular review.¹⁰⁵ Officers are required to report any instance when a personal firearm has been drawn or pointed even if it is not discharged. There are also a number of specifically trained firearms officers to deal with pre-planned and spontaneous firearms incidents. These officers are deployed with Heckler & Koch weapons and the 'Glock' personal issue handgun, but they also have other less lethal options available (i.e. Taser and AEP).

As evidenced by Table 2, the number of times where firearms were drawn or pointed (but not fired) had steadily increased between 2014 and 2019; from 265 in 2014/15 to 520 in 2018/19. Fortunately, this trend has not continued into 2019/20, with 505 reported incidents where a firearm has been drawn or pointed. Despite the rising trend between 2014 and 2019, the number of firearms discharged remained consistently low (between 0 and 1), which was similarly the case during 2019/20 (0 reported discharges). PSNI were previously unable to provide an exact reason for the increases between 2014 and 2019, but advised that, after a review of the Personal Safety Programme (PSP) and firearms training in 2016, officers employ the NDM when

¹⁰⁵ Recommendation 65 of *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999 (the Patten Report) stated that "the question of moving towards the desired objective of a routinely unarmed Police Service should be periodically reviewed in the light of developments in the security environment". PSNI regularly assesses the need for continued carriage of firearms by PSNI officers in the context of the current security situation and reports to the Policing Board in writing on the outcome of its deliberations on an annual basis.

responding to incidents which places an emphasis on officers considering the full range of tactical options. By way of assurance PSNI in 2019 advised that the existing emphasis on officers being required to justify all actions taken and reporting their use of force remains. PSNI also highlighted that generally there has been an increase in the number of assaults on police officers on duty from 2,576 in 2016/17 to 2,700 in 2017/18. The main reasons given for use of firearms across the last three years has consistently been to protect self (98%, 98%, 99%) and to protect other officers (94%, 96%, 95%).

Recommendation 11

The Policing Board will work with the PSNI over the next year to seek to make public the use of force statistics by gender, age, ethnic minority and disability etc. Subject to the actions taken by the PSNI to respond to the stop and search case of Ramsey, the Policing Board will discuss with the PSNI the production of statistics on the use of force and community background status of those subjected to this use of force.¹⁰⁶ PSNI should report to the Board on the reasons for the increases in the number of times force has been used.

¹⁰⁶ It appears that in England and Wales some kinds of use of force, such as tasers, are eight times more likely to have been used against black people than white. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853204/police-use-of-force-apr2018-mar2019-hosb3319.pdf and The Guardian (<https://www.theguardian.com/uk-news/2020/apr/17/rights-groups-quit-uk-police-body-stun-gun-use-bame-people>)

CHAPTER 6 - COVERT POLICING

The Board has a statutory duty under the Police (Northern Ireland) Act 2000 to maintain and secure an efficient and effective police service. Amongst other things, the Board must monitor the performance of the police in carrying out their general duties (to protect life and property, to prevent the commission of offences etc.) and in doing so must monitor police compliance with the Human Rights Act 1998. The Board must also monitor the performance of the police in carrying out their functions with the aim of (a) securing the support of the local community; and (b) acting in co-operation with the local community. The Board must make arrangements for obtaining the co-operation of the public with the police in the prevention of crime. In discharging those duties, the Board has retained oversight of and held the Chief Constable to account in respect of all aspects of police work, including that which relates to National Security. The Board has no remit in respect of the Security Service; however the Chief Constable of PSNI remains responsible for and accountable to the Board in respect of all PSNI officers and staff including those working alongside the Security Service.

In respect of the exercise of specific counter-terrorism powers and security powers, the Performance Committee considers PSNI statistics on police use of stop and search and stop and question powers. The Board also takes account of the work carried out by other relevant oversight authorities. The Performance Committee meets regularly with the Independent Reviewer of Terrorism Legislation, the Independent Reviewer of the Justice and Security Act and the Independent Reviewer of National Security Arrangements in Northern Ireland.

NATIONAL SECURITY

Responsibility for national security intelligence work was transferred from the PSNI to the Security Services in 2007. However, in all circumstances, including where national security issues are involved, it is the role of the PSNI to mount executive policing operations, make arrests and take forward prosecutions under the direction of the PPS for Northern Ireland. In monitoring PSNI's compliance with the Human Rights Act 1998 in this regard, the Board relies upon Annex E to the St Andrew's Agreement. Annex E

states that the Security Service will participate in briefings to closed sessions of the Board to provide appropriate intelligence background about national security related policing operations. Annex E also states that the Board's Human Rights Advisor should have a role in human rights proofing the relevant protocols that underpin the principles within which the PSNI must operate and also in confirming that satisfactory arrangements are in place to implement the principles.

In the first six months of his appointment the new Human Rights Advisor began to examine these issues, however the Covid-19 restrictions in March 2020 prevented this work from continuing. Sensitive briefings are more difficult using electronic means, some documents are too sensitive to send or to be viewed other than in secure locations and face to face meetings would have breached the Government's stay at home advice. However, the Advisor will work with the PSNI to adapt to this new and changing set of circumstances, in order that this oversight may continue into 2020/21.

Terrorism Acts

Regarding the oversight of specific counter-terrorism and security powers, the Government's appointed Independent Reviewer of Terrorism Legislation reviews and reports annually on the operation of the Terrorism Act 2000 (TACT) and Part 1 of the Terrorism Act 2006 across the UK. The powers provided to police officers within TACT include, amongst others, powers to stop and search persons and vehicles and the section 41 power to arrest and detain (which can last for up to 14 days on judicial authority). Mr Max Hill QC occupied the role from 2017 to late 2018; during his tenure he produced two annual reports and one investigation report.

Mr Jonathan Hall QC took over as the Independent Reviewer of Terrorism in May 2019. The Board Chair met with Mr Hall in July 2019 to discuss the findings from the Mr Hill's annual report and arrangements for future reporting. As part of this Mr Hall briefed Members of the Performance Committee in October 2019. The Human Rights Advisor has also met him separately and has been in contact with him several times.

Jonathan Hall QC's first Annual Report for 2018 was published in March 2020, within which it contains a separate chapter on Northern Ireland (Chapter 9) raising key issues for the PSNI and for the Board to consider.

The introductory sections are very useful for understanding the overall context and the provisions of the Terrorism Acts that PSNI use; however these will not be reproduced within this report.

COVERT SURVEILLANCE

The following is a very brief overview of the regulatory regime. It does not cover every piece of legislation or Code of Practice. There are a number of other pieces of legislation that apply (not always consistently) in respect of the interception of communications¹⁰⁷ which are not considered here but compliance with which is considered by others including the Board's Human Rights Advisor.

Regulation of Investigatory Powers Act 2000

In 2000, the Government introduced the Regulation of Investigatory Powers Act 2000 (RIPA), which had the stated intention to better regulate and make human rights compliant rules on covert activity. RIPA must be interpreted and applied where possible so as to comply with the ECHR. Therefore, even with a regulatory regime which contains a number of safeguards, the requirement to consider the various elements such as proportionality, remains; slavish attention to the technical aspects of RIPA does not guarantee human rights compliance.

The police powers governed by RIPA are: the interception of communications (in the course of its transmission by means of a public postal service or public communication system); intrusive surveillance on residential premises and in private vehicles; covert (directed) surveillance; the use of Covert Human Intelligence Sources (CHIS - commonly referred to as police informants, agents and undercover officers); the acquisition of communications data (for example itemised telephone billing and telephone subscriber details); and, the investigation of electronic data protected by encryption. One of the safeguards provided by RIPA is the requirement that covert operations must be subject to an authorisation regime.

Investigatory Powers Act 2016

¹⁰⁷ For example the Telecommunications Act 1984, the Wireless Telegraphy Act 2006 and Schedule 7 of the Terrorism Act 2007

The Investigatory Powers Act 2016 provides an updated framework for the use by the security and intelligence agencies, law enforcement and other public authorities of investigatory powers to obtain communications and communications data.¹⁰⁸ These powers cover the interception of communications, the retention and acquisition of communications data, and equipment interference for obtaining communications and other data. It is not lawful to exercise such powers other than as provided for by the Act. The Act also makes the provision relating to the security and intelligence agencies' retention and examination of bulk personal datasets. The Act governs the powers available to the state to obtain communications and communications data. It provides more consistent statutory safeguards and clarifies which powers different public authorities can use and for what purposes. It sets out the statutory tests that must be met before a power may be used and the authorisation regime for each investigative tool, including a new requirement for Judicial Commissioners to approve the issuing of warrants for the most sensitive and intrusive powers. The Act also creates a new Commissioner to oversee the use of all of these powers. There is also a provision to create an Investigatory Powers Commissioner for Northern Ireland but this is yet to be implemented.

Finally, the Act provides a new power for the Secretary of State to require, by notice, communications services providers to retain internet connection records. However, this new Act did not repeal the whole of RIPA and some of the basic provisions of RIPA remain unchanged.

The new Office of Investigatory Powers Commissioner conducts annual inspections of PSNI and makes recommendations. In the past the Board's Human Rights Advisor reviews these inspection reports (under the previous RIPA regime) and the PSNI's response to it. Those documents often contain sensitive confidential material which cannot be reproduced.

The first inspection since the new Human Rights Advisor was appointed (June 2019) occurred in March 2020. The Human Rights Advisor reviewed the inspection report by the Independent Powers Commissioner's Office and noted that, overall, it is positive in respect of PSNI practice and procedure. While there were suggestions for

¹⁰⁸ For more information see *Covert Policing*, Simon McKay, 2015, OUP (which was written before the 2016 Act) and *Blackstone's Guide to the Investigatory Powers Act*, Simon McKay, 2017, OUP.

improvement and two formal recommendations, in the view of the Advisor, neither of those recommendations raised issues of human rights compliance.

National Security

Not all covert policing operations will involve a national security element, but national security policing is one area in which covert techniques are frequently deployed. Primacy for national security intelligence was transferred from the PSNI to the Security Services in 2007. However, in all circumstances, including where national security is in issue, it is the PSNI which mounts and is responsible for executive policing operations. Therefore, oversight through, for example, the Board is increasingly important, but complex. To clarify the oversight arrangements, Annex E to the St. Andrews Agreement was intended to provide a clear line of oversight and accountability following transfer of primacy. It includes a commitment by the British Government in relation to future national security arrangements in Northern Ireland. It was drafted in anticipation of the transfer of responsibility to the Security Services. The UK Government confirmed that it accepted five key principles. Adherence to those principles is crucial to the effective operation of national security arrangements. Those principles are:

1. All Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI;
2. PSNI will be informed of all Security Service counter-terrorist investigations and operations relating to Northern Ireland;
3. Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy, and using police procedures;
4. The great majority of national security CHIS in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols;
5. There will be no diminution of the PSNI's ability to comply with the Human Rights Act 1998 or the Policing Board's ability to monitor that compliance.

Oversight by the Policing Board

The Board has a statutory duty under the Police (Northern Ireland) Act 2000 to maintain and secure an efficient and effective police service. Amongst other things,

the Board must monitor the performance of the police in carrying out their general duties (to protect life and property, to prevent the commission of offences etc.) and in doing so must monitor police compliance with the Human Rights Act 1998. The Board must also monitor the performance of the police in carrying out their functions with the aim of (a) securing the support of the local community; and (b) acting in co-operation with the local community. The Board must make arrangements for obtaining the co-operation of the public with the police in the prevention of crime. In discharging those duties, the Board has retained oversight of and held the Chief Constable to account in respect of all aspects of police work, including that which relates to National Security. The Board has no remit in respect of the Security Service; however the Chief Constable of PSNI remains responsible for and accountable to the Board in respect of all PSNI officers and staff including those working alongside the Security Service.

In respect of the exercise of specific counter-terrorism powers and security powers, the Performance Committee considers quarterly PSNI statistics on police use of stop and search and stop and question powers (as discussed in Chapter 3 this Human Rights Annual Report). The Board also takes account of the work carried out by other relevant oversight authorities. In addition to meeting with the Independent Reviewer of National Security Arrangements in Northern Ireland, the Performance Committee meets regularly with the Independent Reviewer of Terrorism Legislation and the Independent Reviewer of the JSA.

Annex E to the St. Andrews Agreement states,

There will be no diminution in police accountability. The role and responsibilities of the Policing Board and the Police Ombudsman *vis-a-vis* the Police will not change... The Policing Board will, as now, have the power to require the Chief Constable to report on any issue pertaining to his functions or those of the police service. All aspects of policing will continue to be subject to the same scrutiny as now. To ensure the Chief Constable can be fully accountable for the PSNI's policing operations, the Security Service will participate in briefings to closed sessions of the Policing Board to provide appropriate intelligence background about national security related policing operations. On policing that touches on national security the Chief Constable's main accountability will be to the Secretary of State, as it is now.

Given the nature of covert and national security policing, there are limitations in respect of the amount of information that can be provided to Members of the Board.¹⁰⁹ Section 33A(1) of the Police (Northern Ireland) Act 2000 requires the Chief Constable to provide the Board with such documents and information that it requires for the purposes of, or in connection with, the exercise of any of its functions. Section 33A(2) qualifies that obligation and permits the Chief Constable to refuse to provide any information that falls within specified categories; the Chief Constable may refuse to provide information if it is not in the interests of national security to disclose the information to the Board or disclosure of the information would likely put an individual in danger. The Chief Constable is not *prohibited* from providing the Board with such information; but neither is he *obliged* to provide it. In the event of any dispute about whether the information is properly withheld there is a mechanism (both statutory and by an agreed protocol) for that dispute to be resolved.¹¹⁰

Oversight of National Security Arrangements

This is a summary of the main findings from the report by His Honour Brian Barker QC, the Independent Reviewer of National Security Arrangements in Northern Ireland, covering the period from 1 January 2017 to 31 December 2018.¹¹¹ His Honour Brian Barker concludes:

‘Throughout the reporting period I have been briefed periodically on the state of threat in Northern Ireland. I received presentations from PSNI and MI5 on the practical effect of their co-operation and mutual reliances. My visits to PSNI establishments and to MI5 left an impression of deep commitment and professionalism, further demonstrated by their openness and willingness to respond to all aspects of my enquiries. Strong cross-border links continue with An Garda Síochána.

¹⁰⁹ However the Board’s Human Rights Advisor, who is vetted so as to enable him to access secret material, has not been denied access to any document which he wished to inspect.

¹¹⁰ Section 59 of the Police (NI) Act 2000. The Policing Board agreed, in December 2012, a formal protocol for requiring the Chief Constable to submit a report under section 59 of the 2000 Act.

¹¹¹ National Security Arrangements in Northern Ireland 1 January 2017 – 31 December 2018: Written statement by Rt Hon Karen Bradley - HCWS1538

The context in which national security activities are performed in Northern Ireland remains challenging and members of the security forces continue to require vigilance in relation to their personal security. Dissident republicans continue to express political conviction to justify violence and law breaking, while loyalist paramilitaries maintain control in areas by self-justified intimidation and administration of violence. As in recent years there have been successes and considerable effort devoted to containing and disrupting dissident groups. Nevertheless, planning and targeting continues and attacks occur.

The number of security related incidents for this reporting period are broadly similar to my previous report; in 2017 shooting incidents rose from 49 to 58, whilst the number of security related deaths decreased from 6 to 2. There were 29 bombing incidents, and casualties from paramilitary style assaults (excluding fatalities) increased from 65 to 73; casualties from paramilitary style shootings (excluding fatalities) also increased from 20 to 28. The number of persons arrested and charged under s.41 of TACT decreased from 18 to 11.

This period I have focused on Covert Human Intelligence Sources [CHIS]. There is excellent cooperation between MI5 and PSNI on CHIS operations, including frequent meetings between PSNI and MI5 at a senior level to discuss CHIS policy and operations. In accordance with the St. Andrews principles, PSNI manage the majority of national security CHIS. There is a systematic review procedure for CHIS.

The political situation is difficult and complex and throughout this reporting period Northern Ireland was without a functioning Executive and Assembly, despite a number of attempts at negotiations between parties; concern about the effect of the political situation was a recurring theme in many of my stakeholder engagements.

I met a range of stakeholders in this reporting period, including the Northern Ireland Policing Board, the Police Ombudsman for Northern Ireland (PONI), the Attorney General (AG) and the Committee on Administration of Justice (CAJ).

The Board highlighted the effect of not being able to fully operate, due to the lack of a functioning Executive or Assembly, and raised concerns that crucial decisions, such as an inability to retain their independent Human Rights Advisor, could lead to a diminution of trust in their work.

PONI outlined the challenge of balancing a large volume of Troubles-era complaints against a limit to the resources available to investigate.

The Committee on Administration of Justice (CAJ) raised concerns about the effect of the lack of an NI Executive and the potential impact of EU Exit. They reported that their relationship with PSNI was good and improving. CAJ proposed a framework where the operational boundaries of MI5 and PSNI responsibilities relating to NIRT, paramilitarism and extreme right activity was published. CAJ believe this would have an international benefit and would give accountability and public acceptability.

A meeting with the Attorney General (AG), John Larkin QC, was productive. Within the scope of his remit, the AG explained his hope for improvement to certain elements of the criminal justice system, such as more informative defence statements and better monitoring of entrapment accusations and subsequent requests for disclosure.

Overall, I continue to be impressed with the standards and commitment of the senior members of MI5 and the PSNI and understand the frustration all stakeholders experience due to the lack of a functioning Executive.¹¹²

The current Human Rights Advisor has been briefed by both the Security Service (MI5) and the PSNI on the current security threats and how these are being dealt with.

Management and Handling of Informers (CHIS)

¹¹² Reported by the Secretary of State in a Written Statement on 7th May 2019
<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-05-07/HCWS1538/>

Covert Human Intelligence Sources (CHIS) or informers may only be authorised for use in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA). Under RIPA a person is a CHIS if they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within: the covert use of a relationship to obtain information or to provide access to any information to another person; or the covert disclosure of information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.¹¹³

A relationship is established or maintained for a covert purpose if and only if it is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.¹¹⁴ A relationship is used covertly, and information obtained is disclosed covertly, if and only if the relationship is used or the information is disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.¹¹⁵

It is fundamentally important that a CHIS is clear on what is and is not authorised at any given time and that all the CHIS's activities are properly risk assessed. The use or conduct of CHIS is a particularly intrusive and high-risk covert technique, requiring dedicated and sufficient resources, oversight and management. For example, all use or conduct must be necessary and proportionate to the intelligence that it seeks to achieve and in compliance with relevant Articles of the ECHR, particularly the right to privacy.

Article 8 ECHR includes the right to privacy and the right to a private life, including the right to establish and develop relationships.¹¹⁶ Any manipulation of a relationship by a public authority therefore will engage Article 8, regardless of whether or not the public authority intends to acquire private information. Importantly though, not everyone

¹¹³ Section 26 of RIPA, which has been slightly amended but not repealed by the Investigatory Powers Act 2016. For more information see Blackstone's Guide to the Investigatory Powers Act, Simon McKay, 2017, OUP.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ See for instance the Undercover Policing Inquiry set up by the Home Secretary <https://www.ucpi.org.uk/about-the-inquiry/>. This Inquiry was in response to [independent reviews](#) by Mark Ellison QC, which found "appalling practices in undercover policing".

providing information will be a CHIS. A member of the public who volunteers information or a professional person who discloses information out of professional or statutory duty will not be a CHIS. Critically, if it is known or suspected that an individual may be vulnerable (including by reason of age), that person should only be authorised to act as a CHIS in the most exceptional circumstances.

A CHIS may also infringe on the Article 8 rights of others. The interference with the private and family life of persons who are not the intended subjects of the CHIS activity is called collateral intrusion. Measures are required wherever practicable, to avoid or minimize interference with the private and family life of those who are not the intended subjects of the CHIS activity. Where collateral intrusion is unavoidable, the activities may still be authorised providing the collateral intrusion is considered proportionate to the aims of the intended intrusion. Any collateral intrusion should be kept to the minimum necessary to achieve the objective of the operation. Applications for authorisations will therefore include an assessment of the risk of any collateral intrusion, and details of any measures taken to limit this, to enable the authorising officer fully to consider the proportionality of the proposed use or conduct of CHIS.

That also means that if the nature or extent of intrusion into the private or family life of any person becomes greater than anticipated in the original authorisation, the authorising officer should immediately review the authorisation and reconsider the proportionality of the operation. Furthermore, authorising officers need to be aware of particular sensitivities in the local community where CHIS are being used and of similar activities being undertaken by other public authorities which could have an impact on the deployment of the CHIS. Consideration should also be given to any adverse impact on community confidence or safety that may result from the use or conduct of CHIS. Confidential information obtained by the use of CHIS is regulated and if the confidential material includes material that is legally privileged a higher threshold again must be met.

Special safeguards apply to the use or conduct of CHIS who are under 18 years. For example, the use or conduct of CHIS less than 16 years of age can never be authorised to give information against their parents or any person who has parental responsibility for them. In other cases, authorisations should not be granted unless

special provisions are complied with.¹¹⁷ Authorisations for children are also shorter in duration than for adults.

To ensure proper oversight and management of CHIS, individual officers are appointed as handlers and controllers. When deploying a CHIS the police must always take into account the safety and welfare of the CHIS and the foreseeable consequences to others before authorising their use or conduct. Therefore, a risk assessment will be carried out to determine the risk to the CHIS of any tasking and the likely consequences should the role of the CHIS become known. The ongoing security and welfare of the CHIS, after the cancellation of the authorisation, should also be considered at the outset. Consideration should be given to the management of any requirement to disclose information tending to reveal the existence or identity of a CHIS. In practice, a CHIS handler will be responsible for bringing to the attention of the CHIS controller any concerns about the personal circumstances of the CHIS, insofar as they might affect: the validity of the risk assessment; the conduct of the CHIS; and the safety and welfare of the CHIS. Authorisations are kept under regular review.

The authorisation process for both intrusive and directed surveillance has been reviewed by the Board's Human Rights Advisor and by the Office of the Surveillance Commissioners (OSC). The Investigatory Powers Act creates new oversight arrangements – the Investigatory Powers Commissioner. A complainant may bring a complaint to the Commissioner or to the Investigatory Powers Tribunal¹¹⁸ (and may in limited circumstances have a claim which can be brought before a domestic court) but it can be noted that the right to a remedy for breach of an infringement depends upon the person affected by it knowing of the infringement. By the very nature of covert surveillance that is rarely the case.

The ECHR has reiterated that “subsequent notification of surveillance measures is inextricably linked to the effectiveness of remedies and hence to the existence of effective safeguards against the abuse of monitoring powers, since there is in principle little scope for recourse to the courts by the individual concerned unless the latter is

¹¹⁷ See for example the Regulation of Investigatory Powers (Juveniles) Order 2000.

¹¹⁸ Set by RIPA 2000 and amended by the Investigatory Powers Act 2016.

advised of the measures taken without his or her knowledge and thus able to challenge their legality retrospectively.”¹¹⁹

In 2017, PSNI revised and reissued its manual on the management of CHIS. The PSNI also follows, for example, the NPCC guidance.¹²⁰ The PSNI manual was provided to the Board’s then Human Rights Advisor who was also provided with accompanying guidance, protocols and Service level Agreements. Additionally, she was briefed by officers on the operation of the same. While the Human Rights Advisor is unable to share secret information or disclose, beyond the Board, confidential information, she briefed the Performance Committee about the arrangements and mechanisms in place to ensure compliance with the Human Rights Act 1998. The PSNI recognise not just the legal parameters but also the necessity to be ethical in all decision making and actions.

The manual is a comprehensive document, which covers, amongst other things: ethics, human rights standards, policing with the community ethos, training as well as the more technical aspects of CHIS management. Risk assessment and procedures for ensuring the management of risk are detailed and carefully considered. The combination of the above documents, training and oversight, including that permitted to the Human Rights Advisor, has created an environment and operational framework which will, so far as it is possible, secure compliance with human rights standards and the general principles set out above. The former Human Rights Advisor noted that her assessment accorded with that of the Surveillance Commissioner.

The new Human Rights Advisor has also been briefed on PSNI CHIS handling issues, directed surveillance and other techniques. One briefing concerned with crime and paramilitary activities and another dealing with threats from dissident republicans. More detailed monitoring of all the covert techniques used by PSNI will take place and be reported on during 2020/21. The Human Rights Advisor was also briefed on the challenges of using informers and avoiding any action that might encourage the participation in criminal offences. The procedures to control these challenges

¹¹⁹ *Weber & Saravia v Germany* (2008) 46 EHRR.

¹²⁰ The National Police Chiefs’ Council (NPCC) brings police services in the UK together to help policing coordinate operations, reform, improve and provide value for money: <https://www.npcc.police.uk/Home.aspx>

appeared to be very thorough and those involved scrupulous in their approach. A deeper analysis of these processes is, however, planned for the future, perhaps with a view to making some of the general procedures more transparent.

Recent guidance on the use of Covert Human Intelligence Sources

A recent case taken to the Investigatory Powers Tribunal (IPT) has clarified the role of MI5 in using informers and the extent to which those informers or agents are protected if they commit criminal offences. The IPT is a specialist UK wide tribunal set up by the Regulation of Investigatory Powers Act to deal with claims concerning surveillance and human rights. The case was taken by four NGOs: Privacy International, Reprieve, the Committee on the Administration of Justice (based in Northern Ireland, and the Pat Finucane Centre (based in Northern Ireland) and challenged a policy which was acknowledged to exist by the Prime Minister in 2018 (known as the “Third Direction”), which they suggested purports to “authorise” the commission of criminal offences by officials and agents of the Security Service (MI5). The Guidelines included the following:

“The nature of the work of the Service is such that its agents are frequently tasked to report on sophisticated terrorist and other individuals and organisations whose activities may pose a threat to national security and/or involve the commission of serious offences. In those circumstances, it may sometimes be necessary and proportionate for agents to participate in criminality in order to secure or maintain access to intelligence that can be used to save life or disrupt more serious criminality, or to ensure the agent’s continued safety, security and ability to pass such intelligence.”

Unsurprisingly, the IPT decided that MI5 has the power to run agents but that MI5 cannot, despite anything in its own rules and guidelines, create any immunity from prosecution for an agent who commits crimes. Of course, however, the PPS is not bound to prosecute and must consider the public interest before doing so.

CHAPTER 7 – VICTIMS

One of the most important duties that police carry out is in respect of protecting victims of crime and supporting those most vulnerable or at risk in our society.¹²¹ Article 1 of the ECHR provides that States undertake to ‘*secure to everyone within their jurisdiction*’ the rights and freedoms set out in the Convention (and its protocols). In certain circumstances, the police may have a positive obligation to intervene to protect an individual’s rights. That is most relevant when the police are dealing with victims of criminality. The case law of the Strasbourg Court indicates a range of situations where these positive obligations will have a direct impact upon the discharge of police responsibilities.¹²² Examples can be seen in the imposition of a duty to take reasonable steps to investigate claims and arrest suspects (where the grounds exist to do so), but also in more specific situations, such as where there is a real risk of domestic violence¹²³ or an identifiable risk of violence from another person¹²⁴ (often evidenced by repeat victimisation or repeat offending).

As noted in the previous Human Rights Annual Report, ‘*the police response to the report of a criminal offence will have a direct and often decisive impact on a victim’s attitude to the criminal justice system... [officers] must ensure that the victim feels that the offence is being considered properly and is being taken seriously*’.¹²⁵

Therefore, in addition to monitoring PSNI’s operational response to victims through the Northern Ireland Policing Plan (see below), the Performance Committee considers the mechanisms in place to ensure the appropriate and rights-based treatment of victims by police officers. This refers to the training, policy and operational guidance provided to police officers to ensure that the safety and rights of all victims remains paramount, and that appropriate steps are taken to address the needs of each victim, no matter the circumstances or particular vulnerability of the individual.¹²⁶

¹²¹ *Annual Performance Plan 2020/21*, Northern Ireland Policing Board, available at <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/policingplan2020-25.pdf>

¹²² Jim Murdoch and Ralph Roach, *The European Convention on Human Rights and Policing: A handbook for police officers and other law enforcement officials*, Council of Europe publishing: https://www.echr.coe.int/Documents/Handbook_European_Convention_Police_ENG.pdf, pg.15

¹²³ *Aydin v Turkey*, judgment of 25 September 1997 at paragraphs 103-109, in *ibid*

¹²⁴ *Osman v the United Kingdom*, judgment of 28 October 1998, in *ibid*

¹²⁵ *Human Rights Annual Report 2016/17* pg.144

¹²⁶ The PSNI defines vulnerability as: ‘a term used to describe a person who is in need of special care, support or protection because of age, disability or risk of abuse or neglect’.

This work is considered in conjunction with the Board's monitoring of police performance against the Northern Ireland Policing Plan and Annual Performance Plans. A measure in the Annual Performance Plan 2020/21 considers how the police service supports repeat victims¹²⁷ of (i) Domestic Abuse, (ii) Child Sexual Abuse and Exploitation (CSAE) and (iii) Hate Crime.¹²⁸ The PSNI must provide the Board with evidence and analysis of the activities undertaken to improve the service provided to the identified groups. Within this reporting framework the Policing Board also expects the PSNI to demonstrate how effectively it collaborates with a range of key partners in the public, private and voluntary sectors. The Board publishes an annual assessment of PSNI's performance in relation to these reports, which highlights both good practice and areas where further improvement is required. Detailed analysis of the activities undertaken by the PSNI to protect and support victims during 2019/20 can be found on the Board's website.¹²⁹

Throughout 2019/20, the Performance Committee has considered PSNI's performance reports and engaged with key stakeholders to consider the service provided to victims of crime and those most vulnerable or at risk in our society. The findings of external reviews conducted by criminal justice organisations, alongside regular engagement with community groups and victim organisations, has been pivotal to this area in the monitoring framework. In June 2019 the Committee were encouraged to note that the latest HMICFRS PEEL inspection reports for 2018 recorded that the PSNI is 'Good' at protecting vulnerable people and supporting victims.¹³⁰ This is an improvement from the previous inspection of vulnerability in 2016 when the service was judged to 'require improvement'.¹³¹ Of particular note are the positive comments in relation the PSNI's developed understanding of the nature and scale of vulnerability in Northern Ireland, and that officers and staff recognise it as a

¹²⁷ The PSNI defines a repeat victim as "a person who has been a victim of a crime on more than one occasion in a 12 month period. The repeat victimisation rate is the percentage of all victims who are repeat victims".

¹²⁸ Annual Performance Plan 2020/21, Northern Ireland Policing Board, available at <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/policingplan2020-25.pdf>

¹²⁹ Policing Board Assessment of the PSNI Performance Against the Policing Plan 2019-20 [ENTER LINK ONCE AVAILABLE]

¹³⁰ HMICFRS PEEL: police efficiency and effectiveness 'An inspection of the Police Service of Northern Ireland' 2018 Available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/peel-police-efficiency-effectiveness-2018-psni.pdf>

¹³¹ HMICFRS PEEL: Police effectiveness (vulnerability) 'An inspection of the Police Service of Northern Ireland', 2016. Available from: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/psni-peel-effectiveness.PDF>

priority. However, the report also recognises that there are a few areas where the service could be more efficient, such as the referral process for vulnerable people to support agencies.¹³² Some of these findings, among others by key criminal justice partners, are discussed in further detail under the headings below.

DOMESTIC ABUSE

PSNI publishes quarterly statistics on domestic abuse incidents and crimes on its website which helps inform the scale of domestic abuse and violence in Northern Ireland. Since the start of the data series in 2004/05 there has been increasing levels of domestic abuse incidents and crimes recorded by the police, with incident levels in 2019/20 being 52% higher than those at the start of the series and crime levels 93% higher. The statistical bulletin covering the period 1st April 2019 to 31st March 2020, recorded the highest financial year figures for domestic abuse incidents and crimes since the start of the data series.¹³³ When compared to the previous 12-month reporting period, the number of domestic abuse incidents increased by 0.4% (an increase of 135), while the number of domestic abuse crimes increased by 15.3% (an increase of 2,476).

In 2019/20 domestic abuse crimes represented 17.5% of all police recorded crime, increasing from 16% during the previous 12 months. There were five murders with a domestic abuse motivation, compared with four during 2018/19 and eleven during 2017/18. Particularly noteworthy was an annual increase of 115.6% in harassment linked to domestic abuse in 2019/20, which had previously increased 58.5% between 2016/17 and 2018/19. PSNI explain this increase to be, in part, due to a change in Home Office counting rules. For instance, offences relating to harassment were previously included in the 'violence without injury' classification and since 2017 are now presented in their own classification. A further change introduced April 2018 requires harassment, including malicious communications, to be recorded in addition to the most serious victim-based offence. PSNI advise that, "*Both of these changes in recording practice, along with increasing awareness of the application of these rules*

¹³² Currently such referrals rely on individual officers submitting emails to the central referral unit and HMICFRS found a lack of consistency in the quality of information provided in these referrals. Inspectors recommended introducing a single, standard form for the referral of vulnerable people to support agencies.

¹³³ PSNI, Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland, Update to 31 March 2020, available at: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2019-20/q4/domestic-abuse-bulletin-mar-20.pdf>

in the recording process, will have contributed to increased levels recorded in the overall harassment classification”.

Prior to the collapse of the NI Assembly in January 2017 there had been a focus on domestic violence and abuse and there were a number of developments in respect of legislation and practice. These included: the preparation of a Domestic Abuse Bill which will provide for the introduction of a new offence of domestic abuse, dealing with controlling and coercive behaviour in intimate and close familial relationships, a review of the need for stalking legislation (the Department of Justice consulted on this in early 2019), development of guidance and policy to enable the introduction of Domestic Violence Prevention Orders (DVPOs) and Domestic Violence Prevention Notices (DVPNs)¹³⁴ as legislated for in the Justice Act (Northern Ireland) 2015, but not yet brought into force; the introduction of the Domestic Violence & Abuse Disclosure Scheme (DVADS) which commenced in March 2018; and the development of an appropriate model for a domestic homicide review.

The Domestic Violence & Abuse Disclosure Scheme (DVADS) gives members of the public a ‘Right to Ask’ and make formal enquiries about an individual who they are in a relationship with, or who is in a relationship with someone they know, where there is a concern that the individual may be violent or abusive towards their partner. The scheme also provides the PSNI with a mechanism to proactively tell individuals, who are potentially at risk of abuse from their partner, about their partner’s past. The aim of this scheme is to afford victims of domestic abuse with better protection by enabling potential victims to make an informed choice on whether to continue the relationship. In 2018/19, a total of 336 applications were received and 51 disclosures were made by the police. In 2019/20, a total of 317 applications were received and 45 disclosures were made. Given the comparatively low numbers of police disclosures and the slight decrease in numbers in 2019/20, it is encouraging to note that the Department of Justice has commissioned a review of the scheme in order to evaluate its effectiveness. It is anticipated that work will begin in the latter half of 2020.

¹³⁴ DVPOs are a civil order that fill a gap in providing protection to victims by enabling the police and magistrates’ courts to put in place protective measures in the immediate aftermath of a domestic violence incident where there is insufficient evidence to charge. A DVPN is an emergency non-molestation and eviction notice which can be issued by the police when attending to a domestic abuse incident. It is effective from the time of issue, thereby giving the victim immediate support.

In June 2019, the Criminal Justice Inspection Northern Ireland (CJINI) published a thematic inspection report which indicated that risk assessment in domestic abuse cases could be improved. PSNI's primary risk assessment tool for incidents of domestic abuse and violence is known as the DASH (Domestic Abuse, Stalking and Honour-based violence) risk checklist.¹³⁵ CJINI's case file review highlighted issues with the quality of completed DASH forms. For example, some officers noted 'DASH form refused' rather than completing the form as best as they could with the information known to them (for example, with reference to any previous domestic violence incidents, whether any injuries were sustained). Where Inspectors asked about the reason for this it was generally suggested that the form was too long with too many questions and that officers didn't see the relevance of some of them. However HMIC Inspectors in 2018 had found that the standard of DASH assessments was generally good (albeit based upon findings from a small dip-sample), but similarly noted that officers expressed frustration over the bureaucracy of completing the forms.¹³⁶ It was suggested that the service should consider making the form available for completion and submission on its mobile data platform.

Therefore it is encouraging that PSNI have since advised that they are in the process of moving DASH onto an electronic system, which provides officers mobile access to the checklist and other details in connection with an incident (such as background information on the victim and perpetrator and any statements). This aims to speed up referrals to MARAC¹³⁷ and also hopes to have a positive impact on the quality of completed DASH forms. Officers must submit an answer to all questions in order to proceed, which will hopefully address CJINI's finding in relation to the high numbers of incomplete or poorly filled out forms. The system is currently being tested before further information can be shared formally with the Performance Committee.

¹³⁵ The DASH (Domestic Abuse, Stalking and Honour-based violence) Risk Checklist is a risk assessment tool which includes a series of questions based on extensive research of domestic abuse to aid identification and provide a uniform understanding of risk across professions.

¹³⁶ HMICFRS, PEEL Police efficiency and effectiveness 2018: An inspection of the Police Service of Northern Ireland, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/peel-police-efficiency-effectiveness-2018-psni.pdf>

¹³⁷ Multi Agency Risk Assessment Conference

The Performance Committee were also concerned over the findings of inspection which identified the training and development of new recruits and first responders in the areas of harassment, stalking and coercive and controlling behaviour; and their approach to risk assessment as areas requiring improvement.¹³⁸ During their fieldwork CJINI Inspectors were informed of several incidents which suggested a lack of understanding among PSNI officers around the cycle of domestic abuse and how what may be perceived to be minor can escalate into something much more significant. The report also made the following recommendation in relation to domestic abuse training for officers:

“The PSNI should develop an action plan in relation to: the training and development of new recruits and first responders in the areas of harassment, stalking and coercive and controlling behaviour.”

Inspectors found that while harassment is covered in a specific lesson in PSNI Foundation Training, it is only mentioned in relation to the DASH form during the session on domestic abuse rather than as a form of domestic abuse itself. CJINI note that training and capacity building in PSNI should be undertaken irrespective of specified legislative offences; however it does appear to be a view shared by PSNI. In a written response from the previous Chief Constable to a Policing Board meeting in April 2019 in response to a question from the Performance Committee, it was suggested that training undertaken through the Domestic Abuse Matters Training Programme is *‘built around the particular legislation in those jurisdiction’* and that *‘research shows that learning is likely to be most effective when it occurs nearest to the time and place of use’*. The former Chief Constable stated that the interim period before the introduction of legislation in Northern Ireland would be used to learn lessons from England, Wales & Scotland in order to develop a bespoke training plan.

The Committee recognise that if PSNI are to properly identify and subsequently support vulnerable victims of domestic abuse, particularly where a significant proportion of the behaviour is coercive and/or controlling which is often seen as

¹³⁸ Criminal Justice Inspection Northern Ireland, *Without Witness: Public Protection 2: A Thematic Inspection of the Handling of Domestic Violence and Abuse Cases by the Criminal Justice System in Northern Ireland*, June 2019 p. 10. <http://www.cjini.org/getattachment/079beabb-d094-40e9-8738-0f84cd347ae8/report.aspx>

relatively 'low level' offending, then there must be a sufficient means of capturing this type of behaviour irrespective of a specific legislative provision being in place. It is the Committee's view that even in the absence of specific statutory provisions to date, there does not appear to be any reason why bespoke training could not be provided to probationers coming into the organisation, as well as enhancing the skills and knowledge of existing response and specialist officers.

This is a view shared by victims' organisations who were invited to a roundtable discussion with the Performance Committee in June 2019, where there was a general consensus among those present that the service would benefit from a more structured and consistent approach to the training associated with these issues across the districts. Indeed the Committee has heard from PSNI that they are already actively engaging with key partners in delivering training and skills capability which enhance officers' ability to identify domestic violence and abuse behaviours, as well as supporting vulnerable victims and their families. For example, in the report against the Policing Plan 2019/20, PSNI outlined that a joint training session took place at the end of 2018 which was specifically aimed at probationers who had attended domestic calls since leaving Garnerville. The training was undertaken by PSNI and supported by representatives from Women's Aid and South Eastern Trust Social Services. In Fermanagh & Omagh District officers also received training from Fermanagh Women's Aid in order to enhance their level of understanding of domestic violence and abuse, and to emphasise the support mechanisms in place to support vulnerable victims.

On 31 March 2020, the Justice Minister Naomi Long MLA introduced the Domestic Abuse and Family Proceedings Bill 2020 to the Assembly. The Bill will create a new domestic abuse offence for Northern Ireland which will capture patterns of controlling and coercive behaviour, as well as physical abuse, against a partner, former partner or family member. The legislation will also provide greater protection to victims of domestic abuse by extending the prohibition on cross-examination in person, as well as automatic eligibility for consideration for special measures in criminal proceedings and prohibiting cross-examination in person in family proceedings in certain circumstances. The effect that domestic abuse can have on children is also reflected in the offence. For this reason, where the victim in a relationship is under 18, where

a child sees, hears or is present during an incident of abusive behaviour or where a child is used to abuse a victim, there may be an enhanced sentence.

Significantly, the legislation will make it an offence for a person to engage in a course of abusive behaviour (on two or more occasions) against someone who they are personally connected to. It therefore will close a gap in the law around patterns of abusive behaviour, allowing the criminal justice system to better protect victims who are subject to this and will allow earlier identification of abusive behaviour, intervention and prevention as well as access to information and advice. It will cover behaviour that is abusive¹³⁹ because it is controlling or coercive or amounts to psychological, emotional or financial abuse of the other person. Therefore, it is now recommended that;

Recommendation 12

As a result of the proposed new legislation on domestic violence which is to be expected to be in place this year, it is now recommended that PSNI should provide the Board with its draft written policy and guidance on the use of the new powers and the proposed training plan for officers in light of the recent announcements from the Minister for Justice regarding the introduction of legislation in respect of domestic abuse, harassment, stalking and coercive control.

SEXUAL OFFENCES

A number of recent critical reviews and inspections, namely the Independent Review into how the Law and Procedures in Northern Ireland deal with Serious Sexual Offences ('the Gillen Review'), and the Inspection of the Handling of Sexual Violence and Abuse Cases by CJINI, have highlighted significant issues with PSNI policies and practices in relation to cases involving serious sexual offences. The Gillen Review emphasised the '*the inordinate delay*' across the criminal justice system in respect of these cases, reporting that the time taken for sexual offence cases to complete in the

¹³⁹ Abusive behaviour will also include behaviour that is physically violent, threatening or intimidating.

Crown Court in Northern Ireland is twice as long as in England and Wales.¹⁴⁰ Their research highlighted the urgent need for PSNI to improve efficiency in the early stages of investigations and identified some key causes of avoidable delay. In general terms, the proposed recommendations for PSNI emphasise the need for renewed and specialised training, earlier and more efficient judicial management, and resource-led development of digital technology.

In November 2018 CJINI published a report on how the criminal justice system is currently struggling to handle the level of sexual violence and abuse cases. Inspectors found that while relationships between the PSNI and PPS have strengthened over the last few years, their ability to deliver improved outcomes and reduce delay has been hampered by challenges around securing a sufficient number of suitably qualified and experienced staff and managing their ever increasing workload. The report made one strategic recommendation for PSNI and two operational recommendations (including one joint recommendation for PSNI and the PPS). These echoed concerns raised by the Gillen Review, namely that PSNI need to more effectively assess resource distribution in the Public Protection Branch, and that full, efficient collaboration between PSNI and the PPS requires the transfer of digital information across new technology systems fit for purpose.

The Northern Ireland Audit Office Report also published a report in March 2018 entitled 'Speeding up Justice: Avoidable Delay in the Criminal Justice System.' This report focused on how effectively the four main justice organisations in Northern Ireland have worked together to deliver criminal justice: namely, the PSNI, PPS, the Northern Ireland Courts and Tribunals Service and the Department of Justice. The main findings broadly identified a lack of collaboration between agencies and the need to work in partnership to address the systems current failure to complete cases within reasonable timescales. While cognisant of the fact that police investigations of serious sexual offences are often complex and can relate to long-standing or historical abuse, with multiple suspects and usually significant digital evidence to examine, the report

¹⁴⁰ Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland., p. 210, available at <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>

identified weaknesses in the early stages of investigation as the most critical cause of delay in criminal justice.¹⁴¹

The Performance Committee has expressed concern that the reporting of sexual violence and abuse offences such as rape, sexual assault and child abuse amongst others has almost tripled since 2000/01, and that PSNI figures for 2019/20 show a continuation of this upward trend (3,558 crimes, three times higher than that recorded in 2000/01). While the data could be an encouraging sign that more complainants are prepared to come forward and report to the police, there is no conclusive evidence that this is the case. However, as emphasised by the Gillen Review, if vulnerable victims experience lengthy delays in reaching an outcome and face the reality that conviction rates are very low, the high attrition rate and gross under-reporting of these crimes are likely to continue.

The Committee is encouraged by the PSNI's acceptance of all 30 recommendations relating specifically to the PSNI within the Gillen Review. Senior officers in the PSNI Public Protection Branch provided assurance at the Committee Meeting on 13 February 2020 that progress is well underway to ensure the timely implementation of the recommendations. PSNI are represented on the Sexual Violence Reduction Group established by the Department of Justice to ensure a co-ordinated approach to dealing with sexual violence with a key task of overseeing the implementation of review. A dedicated Gillen Review Implementation Team will drive the delivery of the recommendations. The Committee look forward to engaging further with PSNI during 2020/21 regarding its progress.

CHILD SEXUAL ABUSE AND EXPLOITATION

The Policing Plan 2019/20 highlights the close linkages between 'children who go missing' and those children at most risk of becoming victim to Child Sexual Abuse and Exploitation (CSAE). PSNI reported that in 2018/19 there was 5,498 missing children reports, 64.6% of these were looked after children. These figures show a reduction of missing children reports (6,425) and missing looked after children reports (4,471) from the previous year (2017/18). However over 25% of crimes against children in 2018/19

¹⁴¹ Northern Ireland Audit Office, *Speeding up justice: avoidable delay in the criminal justice system*, March 2018, p. 17, <https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Speeding%20up%20Justice.pdf>

were sexual offences, compared to only 9.8% in 2001/02. There has also been a steady increase in reporting of rape, sexual grooming and other sexual offences involving children over the last three years. At the time of writing, PSNI have advised that the figures for the 2019/20 reporting period are still undergoing analysis and a report will be provided to the Performance Committee in the autumn.

There are approximately 3,000 looked after children in Northern Ireland.¹⁴² Looked after children who go missing are significantly more likely to be reported to the PSNI than any other child who goes missing and of those who are reported missing, children in residential care are three times more likely to go missing/be reported missing. These children, who are already vulnerable due to their age and personal circumstances that necessitate state intervention, can face a variety of significant risks through their participation in high risk activities, by becoming involved in crime or as a result of being victims of crime themselves (including CSAE, misuse of alcohol or drugs). The production of a detailed Missing Person Problem Profile has helped drive more effective partnerships with the Health & Social Care Trust (HSCT), who are PSNI's main partner when dealing with missing people from hospitals and children's homes. This robust evidence base has facilitated the creation of a Joint Working Group with the Health & Social Care Board and the development of a Joint Strategic Action Plan.

In January 2020 PSNI reported a new process and prioritisation criteria to enable a multiagency response to children and young people who repeatedly go missing. A report is produced each month of children and young people who are reported missing three or more times in a rolling six months and, to this, weighted scores are added where the children and young person is either a victim or suspect of occurrences involving violent crime, sexual offences or drugs. Thereafter, a portion of this list will be used by Public Protection Branch to conduct enhanced research and assessment to identify any CSE. In addition, the list is disseminated to Districts to encourage prevention and engagement at an earlier stage. Work remains ongoing to develop an effective way of capturing quantitative and qualitative data to record outcome and share learning and best practice.

¹⁴² Looked after Children is the term used for those children in care facilities.

The last time that PSNI were inspected by HMICFRS on their response to vulnerability was 2018 where it stated that the service has combined intelligence from a range of sources to build up a profile of the nature and scale of CSAE in Northern Ireland. Inspectors noted that many officers have received training to help them identify those children potentially at risk of exploitation. Together with social services, the PSNI has developed a joint standard risk-assessment screening tool, to highlight young people at risk of exploitation. Specialist officers meet monthly with partner agencies including social services at the CSAE risk management meeting, to review and monitor those at risk and develop individual support plans. Inspectors also stated that PSNI is 'good' at protecting vulnerable people and supporting victims, which is evidenced as an improvement following from the previous 'vulnerability' inspection in 2016¹⁴³.

Joint work between the PSNI and the Social Services has proven to be effective in response to the threats posed by CSAE with Trust leads co-located in the respective PUs and underpinned by a number of interface working arrangements including ad-hoc Risk Management meetings, Operational Liaison meetings, Bi-monthly CSAE Risk Management meetings, Quarterly CSAE Team meetings, Strategic Partnership Group meetings and HSC/PSNI Strategic Co-ordination meetings. As well as addressing identified concerns about individual young people, where a risk of CSAE is suspected or confirmed or where they are missing three times or more, this joint work provides for a strategic focus on trends, risks and safeguarding and supports effective joint working. During the reporting year PSNI developed a CSAE Strategic Action Plan and informed the Committee that young people who may be at high risk of CSAE are identified in a number of ways, including internal colleagues who share details of children they have concerns about with the Public Protection Branch (PPB) who may send a referral to the Social Services CSAE lead requesting a joint CSAE risk assessment resulting in an action plan to mitigate the risk to young person, which is reviewed every 8 weeks. PSNI advise that work is currently progressing with key partners and academics to develop and review a more robust current risk assessment tool which aims to be finalised in April 2020. The Committee has requested this as a matter of urgency.

¹⁴³ PEEL Police efficiency and effectiveness Inspection of the Police Service of Northern Ireland, 2018: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/peel-police-efficiency-effectiveness-2018-psni.pdf>

The importance of identifying potential victims of CSAE or those who may be at risk throughout Northern Ireland is led by district police colleagues who are supported by an aide-memoire/guidance produced by the service's CSAE officers to assist in the identification of indicators when conducting return home interviews for young people. PPB sends weekly emails to each police district, highlighting those young persons at high risk of CSAE and the 'persons of concern' relevant to their district. Monthly meetings with district Youth Diversion Officers and CSAE officers provides the opportunity to share information and assist identifying any young person who may be at high risk of CSAE.

It is also important to consider how the digital age has transformed where and how young people spend time, socialise and communicate, and therefore where and how PSNI and partners need to engage and work with them. It is likely that new 'virtual' avenues for grooming have led to the victimisation of young people with a different profile to that of the classic 'victim' of street exploitation. With widespread smartphone usage, many young people now occupy online and physical locations simultaneously. As young people's virtual and physical realities often overlap, risks can be more difficult for adults to detect and control¹⁴⁴. This is particularly important considering the changing nature of CSAE and the surge in online offences. PSNI previously reported, through performance monitoring of the Policing Plan 2018-19, that during 2019/20, the Child Internet Protection Team (CIPT) received 461 referrals in relation to online CSE which led to 141 searches and 101 arrests having taken place during this time period. PSNI advised that arrests will always be lower than referrals as some are duplicates and not actionable, while other referrals are currently being progressed which may result in further arrests in due course.

Of note is a pilot scheme which is ongoing in Belfast which fast-tracks cases of sexual offences on victims under 13 years old, which would include cases where a child has been sexually exploited. The first case reached court in December 2019 securing a conviction. This pilot is set to continue until September 2020. The PSNI CSAE Strategic Action Plan developed in 2019 acknowledges the necessity for continual awareness raising and training and to continue the training delivered in the service in

¹⁴⁴ Barnardos: *What works in responding to child sexual exploitation*, 2019, Available online: <http://www.barnardos.org.uk/what-works-in-responding-to-child-sexual-exploitation.pdf>

2017. The action plan includes measures which are already underway to develop a bespoke e-learning training package specific to the police officer or staff member's role. The completion of this training package will be mandatory and ongoing with the ability to monitor compliance.

PSNI state that currently all student officers receive awareness training of CSAE as part of their Foundation course which includes multi-agency workshops to raise awareness, focusing on missing children with CSAE elements incorporated. This training was delivered to all police, police staff and social workers up to Chief Inspector rank in districts and call handlers. Moreover, the service outlined that these officers were targeted due to the nature of their roles within local policing and neighbourhood teams, bringing them into almost daily contact with young people through responding to missing episodes, issues in residential homes and volume crime reporting.

OLDER PEOPLE

Being a victim of crime can be a traumatic experience for anyone, but there are particular factors that make older people more vulnerable to the effects of crime. These include: a higher rate of fear of crime; a higher rate of physical and mental impairment and disability; a greater likelihood of living alone; a greater likelihood of the absence of support networks; and higher rates of feelings of insecurity. At the same time, care must be taken not to categorise all older victims as vulnerable.

Older people are overall less likely to be victims of violent crime, however when it comes to crimes such as burglary, criminal damage, vehicle theft and violence without injury, older people are more at risk of these forms of victimisation. These are crimes which intrude on what might be considered 'safe spaces' and can cause severe and lasting harm. When older people become victims of crime, they need to be able to have confidence in the response of the PSNI, in partnership with key statutory agencies, including, the PPS and the court system. However, it is reported that the PSNI's outcomes¹⁴⁵ for the crimes outlined above continue to be lower for older people than for other age groups.

¹⁴⁵ The percentage of recorded offences in which an offender is identified and there is a further identifiable outcome to the case including prosecution, a financial penalty or a diversionary alternative.

The Human Rights Annual Report 2016/17 contains the following recommendation;
“The PSNI should consider whether its engagement with older people is effective and, assuming that more could be done, its strategy for engagement with the objective of enhancing the protection of older vulnerable people. The PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report with its analysis.”

In March 2020, PSNI briefed the Performance Committee on the range of activities being undertaken to identify, protect and assist older victims and potential victims of crime. The Committee subsequently received a copy of the Older People and Crime Strategy which was developed to raise awareness of older persons and crime issues, and to develop understanding of the impacts of crime on older people, as well as the drivers of crime where older people are victims. It assists the PSNI in developing policies and guidance in relation to crime and older people, and in developing an operational response to these issues, in order to improve the service provided to victims.

During 2019/20, the PSNI reported that they work with a range of partners¹⁴⁶ to reduce harm and to protect those vulnerable victims of crime, in particular older victims. The Commissioner for Older People (COPNI) published a report on ‘Crime and Justice: The Experience of Older People in Northern Ireland’ in May 2019¹⁴⁷, commenting that when older people become victims of crime, they need to be able to have confidence in the response of the statutory agencies, including the PSNI, the PPS and the court system. The process involved in navigating the criminal justice system can be traumatic for victims of crime and can lead to secondary victimisation¹⁴⁸ therefore it is imperative that any vulnerabilities are identified at the earliest possible stage so that

¹⁴⁶ Trading Standards, AgeNI, Department of Justice, the Commissioner for Older People NI, Women’s Aid, Victim Support NI, NI Direct, Consumer Council, Northern Ireland Fire & Rescue Service, Gumtree, Health and Social Care Trust, Age Sector Platform, Irish League of Credit Unions, PBNI, Dementia NI, Action on Elder Abuse, Banks, Libraries NI, Charities Commission and the National Association of Postmasters.

¹⁴⁷ Commissioner for Older People for Northern Ireland, Crime and Justice: The Experience of Older People in Northern Ireland, May 2019, Available online at: <https://www.copni.org/media/1540/206567-online-a4-crime-report-56p.pdf>.

¹⁴⁸ Secondary victimisation can effect someone’s mental health. Victims may suffer further stress or trauma as a result of their participation in the justice system.

appropriate support can be given to older people. The report makes a recommendation in regards to the possible development of a vulnerability matrix for victims over a certain age, which would seek to introduce a vulnerability score to be returned where an initial crime may appear to be relatively minor, but where the impact on the victim is serious. This in turn may encourage the better identification of victims need so an appropriate response may be put in place to support those vulnerable victims. PSNI report pending changes to IT systems, this could see the flagging of older and other vulnerable victims to the PPS as part of the case preparation process.

During the HMICFRS PEEL inspection of PSNI 2018, inspectors found that the service has continued its efforts to identify and assess hidden demands concerning those that are less likely to be reported to the police and which are more likely to affect vulnerable people. Inspectors found that the service works closely with a range of other bodies to tackle these problems, at both local and national levels. For example, the PSNI has worked closely with the local councils, health and support services to establish support hubs across Northern Ireland.¹⁴⁹

On World Elder Abuse Awareness Day on 15 June 2019, PSNI supported Women's Aid in their 'Older but no safer – it's never too late' campaign to raise awareness of issues faced by older women in regards to domestic abuse. The aim of the campaign was to aid older people being able to understand and recognise the various types of abuse, how to report it and feel confident that action will be taken to ensure they are protected from the perpetrator. This is a visibly positive and informative exercise undertaken by PSNI and as such has raised significant awareness of the issues surrounding domestic abuse of older people. However, there is no further detail on the impact this campaign has had on levels of reporting of domestic abuse among older victims.

HATE CRIME

Hate crimes are any crimes that are targeted at a person because of hostility or prejudice towards that person's disability, race or ethnicity, religion or belief, sexual

¹⁴⁹ HMICFRS PEEL Police efficiency and effectiveness 2018, An inspection of the PSNI, Available online at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/peel-police-efficiency-effectiveness-2018-psni.pdf>

orientation, or gender identity. Hate crime can take many forms but the most common are assaults, intimidation, harassment, and criminal damage. Hate crime is particularly hurtful to victims as it may leave them feeling permanently unsafe and anxious, having wide-ranging impacts on their mental health. It is recognised that the repercussions of this type of crime extend beyond the direct victim, by signalling that members of certain groups are not accepted or not worthy of equal respect. In societies which have already experienced divisions, intolerant hate crime can further exacerbate tensions and undermine community cohesion.

Collecting data on hate crime is essential for increasing understanding of the nature and prevalence of hate crime in Northern Ireland. The Committee examines PSNI 'Hate Motivation Statistics' and PPS annual statistical bulletins in order to track patterns in hate crime and the impact of the police response. Table 3 below shows an overall summary of hate motivated incidents and crimes during 2019/20 with a comparisons to the previous financial year.¹⁵⁰

Table 3: Summary of hate motivated incidents and crimes during 2019/20

Motivation	Total number of incidents recorded			Total number of crimes recorded		
	2018/19	2019/20	Change	2018/19	2019/20	Change
Racist	1,124	936	-188	699	626	-73
Homophobic	281	272	-9	201	195	-6
Sectarian	865	888	+23	622	640	+18
Disability	100	99	-1	53	72	+19

¹⁵⁰ PSNI, Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland Update to 31 March 2020, available at: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/2019-20/q4/hate-motivation-bulletin-mar-20.pdf>

Faith/ Religion	56	41	-15	23	15	-8
Transphobic	33	64	+31	12	34	+22

In 2018/19, hate abuse with a racist motivation accounted for 46% of reported hate motivated occurrences and was the most prevalent type of hate abuse reported to PSNI. The number of reported racist hate motivated incidents (1,336) peaked in 2014/15 and had shown a steady decline the three years following; however, the 2018/19 statistics show a slight increase. Although this increase did not continue into the 2019/20 reporting year, in fact incidents and crimes with a racist motivation showed the largest fall (188 incidents and 73 crimes). Nevertheless, incidents with a racist motivation continued to be the most prevalent type recorded. However the most prevalent type of crime recorded during 2019/20 was sectarian motivated crime (increased by 18).¹⁵¹

Thematic Review on Policing Race Hate Crime

In June 2017, the Policing Board published its dedicated human rights thematic review which examined all aspects of the police response to racism, from prevention to detection, from victim support to engagement with the wider community.¹⁵² The thematic report, which was prepared by the Board's then Human Rights Advisor on behalf of the Performance Committee, provided an in-depth scrutiny of the service but also highlighted the good work taking place across the PSNI to tackle racist hate crime and to secure safer communities for the whole of Northern Ireland.

Due to the challenges faced by the Board during the political impasse, there were unavoidable delays to the Committee formally discharging the recommendations. During 2018/19, Board officials continued receive regular progress updates from the

¹⁵¹ PSNI, Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland Update to 31 March 2020, available at: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/2019-20/q4/hate-motivation-bulletin-mar-20.pdf>

¹⁵² Northern Ireland Policing Board, Thematic Review of Policing Race Hate Crime, available at <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/race-hate-crime-thematic-review.PDF>

PSNI and, following the Board's reconstitution, PSNI attended the Committee in April 2019 to report on its implementation. However, in light of the increase in racist hate motivated incidents during 2018/19, Members considered it prudent to re-examine these issues with the Board's newly appointed Human Rights Advisor, who took up post in July 2019. Therefore, the recommendations are now included in **Appendix 2** and the following section gives a brief overview of the PSNI's work in respect of each recommendation.

The final report made 14 recommendations for the PSNI to consider, all of which were accepted. Twelve of the recommendations have been fully implemented and Recommendation 1 and Recommendation 5 were discharged as sufficient procedures were already in place.

Recommendation 1 required the PSNI to work with the DoJ to consider a 'case flow through system' mechanism for tracking hate crime prosecutions. PSNI advised that this recommendation and Recommendation 6 were dealt with in collaboration with the PPS. As part of the Working Together Project, the PSNI would include the recording and flagging of hate crime on case files passed to the PPS and document the details on the Structured Outline of Case (SOC) form and suspect form. PPS confirmed that this helps to track and prioritise hate crime cases and that procedures are already in place to highlight these cases to court.

Recommendation 2 required PSNI to consider how it engages with the Northern Ireland Housing Executive (NIHE) to enable early intervention on behalf of victims of hate crime for whom the advice is to move from the home. PSNI confirmed that a good working relationship exists between PSNI and NIHE at a local and strategic level, and through its formal partnerships with the PCSPs and concern hubs. Representatives from PSNI, DoJ and NIHE met to discuss housing issues for vulnerable victims of hate crime and awareness session with hate crime advocates were held. Both PSNI and NIHE reviewed their services to victims and potential victims following the review of the hate crime advocacy scheme by Community Evaluation NI.

Recommendation 3 required the PSNI to review the understanding of officers of the perception test¹⁵³ for hate incidents and crimes, following some reluctance (by a minority of officers) to accept the perception of a victim of the hate element in an incident or crime. The recommendation further advised that the PSNI should take all necessary steps to ensure that officers initially accept without question the perception of the victim or any other relevant person that the incident or crime was aggravated by hostility. PSNI progressed a number of initiatives to review officers' understanding of the perception test and ensure full compliance with policy. These included; an electronic survey issued to Districts to demonstrate officers' understanding; Quality Assurance (QA) procedures to ensure hate crime incidents are classified correctly; regular supervision checks; scrutiny at Area Management Meetings in Districts; an update to the Service Instruction regarding the perception test; additional information highlighted to officers over POINT; and quarterly QA reviews carried out with statistics branch which consider categorisation on NICHE and provide reports to District Champions.

In respect of Recommendation 4, PSNI reviewed and amended its Service Procedure in respect of hate crime to include an obligation on relevant officers to contact victims of hate crime regularly and in any event following all of a series of prescribed events so as to ensure compliance with the EU Victims' Directive and Northern Ireland Victim Charter. It has since been reviewed and is considered to meet European standards.

Recommendation 5 has not been implemented in exactly the manner suggested but is considered to be discharged. It requested PSNI to record electronically the data captured on risk assessment forms for all cases of hate crime. PSNI advised that solutions to bridge this gap in its technology would depend on NICHE compatibility, cost-benefit analysis and a modified method being accepted by the PSNI Contact Management Support Unit. PSNI carefully considered this recommendation with partners, including colleagues in England and Wales, to identify what data needs to be captured. It was agreed that the current system is fit for purpose and the Vulnerability Risk Assessment Matrix (VRAM) used by PSNI officers' meets organisational and victims' needs. Senior officers gave their commitment that, if any

¹⁵³ "any incident which is perceived to be racist by the victim or any other person" – Lord McPherson, following the Stephen Lawrence enquiry

national updates to NICHE are made or IT solutions become available then PSNI will review their own practices.

As per Recommendation 7, PSNI reviewed the Service Procedure on hate crime to ensure that the range of special measures available for vulnerable and intimidated victims and witnesses to hate crime are fully explained, and that the importance of early identification of appropriate measures should be communicated to the PPS at the earliest opportunity. Frontline Officers also received refresher training and Hate and Crime Signal Officers (HCSO) received a more intense, two-day training. PSNI confirmed additional information is available in the Service Instruction with hyperlinks and/or annexes containing detailed guidance on the following; the Vulnerability Risk Assessment Matrix (VRAM), Investigation Standards (including use of ABE interviews), a range of Special Measures and Prosecutor Information Forms (PIF). Recommendation 8 required PSNI to ensure, as soon as practically possible, that officers receive training in the use of Community Resolution for hate crimes. This was completed across Districts and the Operational Support Department in May 2017, this was followed by mop-up training delivered in August 2017.

In line with Recommendation 9, PSNI reviews its hate crime statistics annually, looking at trends and key themes to inform the control strategy, communications plan and prevention strategies. PSNI have had a hate crime control strategy in place since September 2017 to release details of race hate crimes or incidents to the media, and on PSNI social media with appeals for information, where appropriate.

Recommendation 10 required PSNI to explore with partners how to better engage with victims and potential victims of hate crime so that they are better informed of the services they are entitled to receive from the police and other agencies. PSNI confirmed that each District has an engagement plan specifically relating to hate crime and that this is updated on an annual basis at the start of each financial year, following the end of year analytical report and problem profile. This facilitates local progression of issues at District level and assists in the identification of areas where services to victims can be improved.

Following the implementation of Recommendation 11, the PSNI now prepares a problem profile for hate crime at the end of each reporting year. This is supported by the creation of a hate crime resource page within the POINT and includes a diversity calendar of key events for all officers and staff to access and also includes a map of locations of interest that may need to be monitored.

Recommendation 12 required PSNI to develop face to face hate crime training with partners, to enable in-depth consideration of the many complex issues surrounding hate crime and permit exploration and debate. PSNI confirmed that foundation training engages student officers through practical scenarios which stimulate this exploration and debate. Student officers must also attend an Information and Awareness evening with contributors from Section 75 groups. Furthermore, monthly updates are supplied to the Silver Lead for district training, engagement and further initiatives. Many districts held face to face meetings with minority groups to forge a better understanding of the challenges they face.

Recommendation 13 required the PSNI to review the hate crime training delivered in 2016 and assess the effectiveness of that training including whether the lessons were delivered to the right officers in sufficient detail. In November 2017 PSNI issued questionnaires to a broad range of Hate and Crime Signalling Officers (HCSOs) that had completed the training in 2016. The questionnaire found that, overall, the training was delivered in sufficient detail. The Student Officer Training Programme (SOTP) was considered to cover all requirements to recognise definitions of stereotype/prejudice; differences of hate crime and hate incident; Perception Test and Allport's Scale of Prejudice; a victim mindset 6 categories of hate crime; VRAM, ABE, legislation; collaborative investigation; PWC values; roles and responsibilities of Special Measures.

Thereafter, District Training was reviewed in order to develop officers' understanding of the new Service Procedure and to emphasise the key roles of Constable, Sergeant and Inspector in respect of file submission and enhanced sentencing investigation training. Furthermore, in 2016 there were 49 HSCOs trained in 5 courses which were run over two days and included common themes such as the NDM, understanding VRAM, understanding Special Measures and the PEACE model of interviewing.

Finally, Recommendation 14 requested that PSNI hate crime training should continue to include cultural diversity training, but that training should be refreshed with the assistance of external experts to address cultural sensitivities and should include racism awareness. PSNI confirmed that there are now two evening engagement sessions for student officers attended by representatives from minority groups. Investigation training for HSCOs was updated and delivered across all Districts between October and December 2018 which was enhanced with the input of four Hate Crime Advocates. In August 2018 an Islamic awareness course was delivered in partnership with The Journey Church and Resurgam Trust. PSNI have advised that hate crime training will be continually refreshed and enhanced with external experts where possible, to ensure more effective training for officers.

Recent Developments

The Committee will continue to consider the PSNI response to hate crime as part of the Police Performance Monitoring Framework. Measure 1.1.1 in the Annual Performance Plan 2020/21 examines the repeat victimisation rate of all hate-motivated crime and requires the PSNI to report on its initiatives designed to support those victims. PSNI must not only demonstrate what activities they have undertaken, but how well they carried them out and what positive difference they have made to repeat victims of hate crime. In addition, Board officials and the Human Rights Advisor will continue to examine local, regional, and national data on hate crimes which will inform monitoring strategies going forward.

In June 2019 the Department of Justice established an independent review “to consider whether existing hate crime legislation represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will or prejudice, including hate crime and abuse which takes place online”. The review is led by Judge Desmond Marrinan and is due to conclude with the publication of a written report in summer 2020. As part of this process, Board Members met with Judge Marrinan in October 2019 to discuss experiences and views on the operation of legislation in Northern Ireland for responding to hate crime.

Members highlighted some of the findings of the thematic review, such as concerns around the lack of legal definition for hate crime, which contribute to poor understanding what constitutes an offence and inconsistency in how the law is applied. In addition, Members noted difficulties within the current legal framework which results in many incidents falling under the threshold for prosecution – namely, the alleged offence must have occurred in a public place and it must be proved that the perpetrator intended to provoke a breach of the peace only.

The Committee noted that the failure to protect victims of hate crime is an important human rights issue and that without comprehensive and consistent hate crime laws, the PSNI will be hampered in its duty to respond effectively. Therefore, the Board submitted a formal response to the review’s consultation, which opened in January 2020. The response highlighted the importance of equipping our police service with the necessary tools needed to carry out its responsibility of keeping people safe from hate crime and upholding principles of equality. Members look forward to receiving the final report and to working closely with the PSNI in respect of its out-workings.

In May 2020, the death of George Floyd during a police arrest in Minneapolis instigated protests across the United States which led to a number of Black Lives Matter protests around the World. In June 2020, protests took place in Northern Ireland in connection with the Black Lives Matter movement and there has been significant public concern that members of the BAME community were treated differently by the police in respect of the issuing of Fixed Penalty Notices under the Coronavirus Public Health Regulations. The OPONI has launched an investigation into how police dealt with a series of public protests between 31 May and 13 June 2020. Following the outcome of the OPONI investigation, the Policing Board will ensure the findings of the report, including any disciplinary or policy recommendations will be fully implemented.

Paramilitarism

Following a recommendation made in the Human Rights Annual Report 2016/17¹⁵⁴, a high level breakdown by age for paramilitary style shootings and assaults is now

¹⁵⁴ PSNI should include an age breakdown of the victims of paramilitary style shootings and assaults within its year end statistical report.

included in the PSNI Security Situation statistical report. In their latest report, between 1 April 2019 to 31 March 2020 there were 13 casualties of paramilitary style shootings, compared to 19 in the previous 12 month period.¹⁵⁵ This was the lowest number of such shootings since 2007/08, and is the third year in a row that the number of such attacks has fallen. All 13 casualties were aged 18 years or older and, of the 13, 11 were carried out by Republicans. There were 67 casualties of paramilitary style assaults during the reporting period compared to 59 during the previous 12 month period. This is the highest number of such attacks since 2009/10 and a reversal of the small decline that was witnessed during 2017/18 and 2018/19. Of the 67 casualties of paramilitary style, 3 were aged less than 18 years old and 72% were attributed to Loyalists.

¹⁵⁵ PSNI, Police Recorded Security Situation Statistics 1 April 2019 to 31 March 2020, available at: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/security-situation-statistics/2020/march/security-situation-statistics-to-march-2020.pdf>

CHAPTER 8 - TREATMENT OF SUSPECTS

When the police detain a person they assume responsibility for the protection of the detainee's ECHR rights. Detention directly engages Article 5 of the ECHR (right to liberty and security) and police must follow strict procedures and must also take every reasonable step to uphold the rights and welfare of all detained persons. Articles within the PSNI Code of Ethics also require police officers to ensure that all detained persons are treated in a humane and dignified manner. It stipulates that arrest and detention must be carried out in accordance with the relevant PACE Codes of Practice and in compliance with the ECHR. Police also have a duty to protect the health and safety of detained persons and take immediate action to secure medical assistance where required.

During 2019/20, there were 22,607 arrests (compared to 22,622 in the previous year) made under the Police and Criminal Evidence (PACE) Order, 84% of which were males.¹⁵⁶ There were 50 persons detained in police custody for more than 24 hours and released without charge, compared to 39 during 2018/19. During 19/20 there were 23 applications to Magistrates Courts for warrants of further detention (slightly down from 28 the previous year). Nine of these applications were for 24 hours or less, one was for between 25 and 35 hours and the other 13 were for a period of 36 hours. Two of these were for a second warrant of further detention. Of the 21 persons subject to a warrant of further detention, 12 spent less than 24 hours under its authority, while 7 spent between 24 hours and 36 hours and the remaining 2 people were detained over 36 hours under the authority of these warrants. A total of 14 persons were subsequently charged.

Independent Custody Visiting Scheme

The Board is responsible for the Independent Custody Visiting Scheme to make, and keep under review, arrangements for designated places of detention to be visited by lay visitors. Independent Custody Visitors (ICVs) are volunteers from the community who are unconnected with the police or the criminal justice system. They make

¹⁵⁶ PSNI, Police and Criminal Evidence (PACE) Order Statistics 1st April 2019 – 31st March 2020, available at: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-and-criminal-evidence/2019/pace-statistics-report-2019.20.pdf>

unannounced visits to police custody suites to check the conditions, treatment and welfare of persons detained, by inspecting the facilities, checking custody records and, with consent, speaking to detainees. Where reasons for concern are identified during these visits, they are raised by ICVs with PSNI who must advise the Board within 28 days of the action taken to remedy the concern.

The Board's Partnership Committee keeps under review the arrangements for the ICV Scheme and where issues are raised in respect of PSNI's compliance with the Human Rights Act 1998, these are passed to the Performance Committee to assess the adequacy of the PSNI response. Custody Visitors are trained to inspect the custody record of any detainee who has consented to the inspection. The Human Rights Annual Report 2016/17 emphasised the central importance of the custody record to ICV visits, as volunteers are able to check that, ... "the detainees have been afforded their rights and entitlements to have someone informed of their arrest, to consult with a solicitor and to consult PACE Codes of Practice; that medication, injuries, medical examinations, meals and diet are recorded and if treatment was required whether it was given; that the procedures to assess special risk or vulnerabilities have been properly recorded and implemented; that rules concerning the timing and frequency of cell inspections, particularly inebriated or otherwise vulnerable detainees, have been complied with; and that reviews of the continuing requirement for detention have been conducted."¹⁵⁷

It is encouraging that in 2018/19 72% (746) records had been checked and in 2019/20 811 records were checked. Based on the number of detainees held, this equates to 71%, a figure consistent with the previous two years and a marked difference from the low numbers eight years ago (49%). Between April 2019 and March 2020, the ICVs carried out 502 visits to custody suites across Northern Ireland of which 49 (10%) were to TACT detainees. There were 1136 detainees held at the time of the 502 valid visits, of which ICVs saw 477 detainees (42%) which is a small increase from the 2018/19 figure of 413 detainees (40%) being seen by ICVs.

In his last report as the Independent Reviewer of Terrorism Legislation, Mr Hill QC expressed concerns over the apparent reluctance of detainees in Northern Ireland to

¹⁵⁷ Human Rights Annual Report 2016/17, p.192

give consent to ICV visits within the TACT custody facility.¹⁵⁸ He recommends that “greater efforts are made to ensure that TACT detainees in NI are encouraged to view the ICVA volunteers entirely independent of the police”. He worked with the Board to introduce a policy change in which ICV’s self-introduce to detainees to encourage increased participation. This commenced in April 2018 and has resulted in a marked improvement in refusal rates whereby 37% of detainees refused to speak with ICVs in the 2017/18 reporting period compared to 20% refusal rate in 2018/19. The refusal rate has unfortunately increased in the 2019/20 year to 27%, (17 detainees out of 64 held at the time of the visits refused an interview with ICVs) so it would appear that the positive trend marked initially has not been sustained. The Board intends to work closely with the new Independent Reviewer, Mr Jonathan Hall QC to try to reduce these refusal rates next year.

Detainees under the Terrorism Act 2000

The Government’s appointed Independent Reviewer of Terrorism Legislation reviews and reports annually on the operation of the Terrorism Act 2000 (TACT) and Part 1 of the Terrorism Act 2006 across the UK. The powers provided to police officers within TACT include, amongst others, powers to stop and search persons and vehicles and the section 41 power to arrest and detain (which can last for up to 14 days on judicial authority). Mr Max Hill QC occupied the role from 2017 to late 2018; during his tenure he produced two annual reports and one investigation report and Jonathan Hall QC took over this role in May 2019. The Board Chair met Mr Hall in July 2019 and he attended the Performance Committee meeting in October 2019. The Human Rights Advisor has also met him separately and has been in contact with him several times.

Jonathan Hall QC’s Annual Report for 2018 was published on 19 March 2020¹⁵⁹ and in this he raised some issues for the PSNI and for the Board. He conveniently produced a separate chapter on Northern Ireland (Chapter 9) and much of the material relevant to the PSNI is in that chapter. The introductory sections are very useful for

¹⁵⁸ The Independent Reviewer of Terrorism Legislation remit includes the police use of the power under section 41 of the Terrorism Act 2000 (arrest and detention of persons suspected to be a terrorist) and, therefore, the welfare and systems of protection of those detained.”

¹⁵⁹ <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2020/03/Terrorism-Acts-in-2018-Report-1.pdf>

understanding the overall context and the provisions of the Terrorism Acts that are being used by the PSNI, but these will not be reproduced in this report.

Section 41 of TACT empowers a police officer to arrest without warrant a person whom he or she reasonably suspects to be a terrorist. A person arrested under section 41 may be detained without charge for up to 48 hours without judicial intervention. If detention is to extend beyond 48 hours it must be extended by a Judge. The extension may be for up to but no more than a total of 14 days. Section 41 is different from other arrest powers, in particular because, although it requires the officer to have reasonable suspicion, it permits arrest without suspicion of a particular offence and a person may be detained without the possibility of bail, for periods in excess of four days.¹⁶⁰ There were 148 arrests under this power, down from 171 arrests in the previous year. There were 4 successful applications for extended detention but only 2 were detained for more than 48 hours. There were 28 requests to have someone informed of the detention and only 3 of these were delayed. No requests for access to a solicitor were delayed.

The Independent Reviewer of Terrorism Annual Reports provide information on these arrest powers however, some further information from the most report is worth noting below:

Para 9.52.

There are four observations which may be made about these figures. The first is that the use of the powers in the Terrorism Acts is dwarfed by the use of those contained in the Justice and Security (Northern Ireland) Act 2007. The power to stop vehicles is almost exclusively carried out under section 21 Justice and Security (Northern Ireland) Act 2007 rather than section 43A Terrorism Act 2000. This is not surprising given that, as has already been explained, the power in section 21 of the 2007 Act can be exercised without the need for reasonable suspicion. However, there are some circumstances in which the use of Justice and Security powers may not be appropriate, for example when an officer is specifically looking for items other than munitions and wireless

¹⁶⁰ If a person has been arrested pursuant to a power under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) the maximum detention period of detention may never be extended beyond 96 hours.

apparatuses. An example is a list of vehicle registration numbers believed to belong to PSNI officers, recorded by dissident republicans for use in future attacks.

Para 9.53.

The second is that the use of the powers in the Terrorism Act 2000 has declined significantly in recent years. In two years, there has been a 46% reduction in the number of stops carried out under section 43 of the Terrorism Act 2000. The decline in the number of stops conducted under a combination of sections 43 and 43A has been even more dramatic, as this has declined by 90% since 2016. There has also been a decline in the use of section 21 of the Justice and Security (Northern Ireland) Act 2007, although it is not as marked. This decline is something that David Seymour CB has commented upon. In his most recent Annual Report, Mr Seymour states that he can find no clear reason for the decline. He explains that there is no indication that the decline is the result of any particular strategy on the part of the PSNI or an improved security situation. Some ethnicity statistics have in the past been presented to the Northern Ireland Policing Board, but not published. I refer to section 21 in particular because it is a no suspicion power. The scale of the use of the section 24 suspicion-based power should not be overlooked.

Para 9.54.

The third observation is that the arrest rate following a stop and search under section 43 of the Terrorism Act 2000, while low, is much higher than the arrest rate following a search under section 21 of the Justice and Security (Northern Ireland) Act 2007. David Seymour CB has repeatedly noted in his reports how the arrest rate following a section 21 stop rarely reaches 1%. By way of contrast, the arrest rate following a section 43 stop has, for many years, hovered at around 10%. In Northern Ireland the arrest rate following a section 43 stop is broadly in line with that in Great Britain, so I have no reasons for believing that the PSNI is using the power inappropriately. The use which is being made of the powers in the Justice and Security (Northern Ireland) Act 2007 falls outside of my remit.

Para 9.55.

Nor can the utility of section 43 of the Terrorism Act 2000 be measured solely by reference to the number of arrests. This is another reason why, for the time being, I am not concerned by the use that is being made of the power in section 43.

Para 9.56.

The fourth observation that there may be other powers than section 43 Terrorism Act 2000, aside from the Justice and Security Act powers, that are used against members or supporters of proscribed groups. As I have already noted, there is a concerted attempt in Northern Ireland to use ordinary policing powers against paramilitaries and paramilitary activity where the phenomenon is treated as in effect one of organised crime rather than terrorism.

Jonathan Hall QC also considered the large number of arrests and the low charge rate which has received close scrutiny by his predecessors. He notes Lord Anderson QC's previous point that the conversion of intelligence into evidence is a challenge in many terrorism-related investigations but appears to be particularly difficult in Northern Ireland.¹⁶¹ Contributory factors are said to include *"suspects who can operate locally, leaving little online trace; the need to protect sources of intelligence; and fear of retaliation on the part of witnesses (a feature of small tight-knit communities)"* (Para 9.67). Jonathan Hall QC notes that, while important to not lose sight of the challenges arising in Northern Ireland, such difficulties *"do not necessarily provide a complete explanation for the disparity revealed by the figures"* (Para 9.69.). He intends to keep this matter under review.

Finally, the report raises some questions about the PSNI's use of the TACT powers at ports (Schedule 7) and a need to look at the safeguards and training that is in place:

Para 9.86:

¹⁶¹ Contributory factors are said to include *"suspects who can operate locally, leaving little online trace; the need to protect sources of intelligence; and fear of retaliation on the part of witnesses (a feature of small tight-knit communities)"* at Para 9.67

“The fact that the PSNI rely so much on discretion when deciding who to examine under Schedule 7 brings the importance of training and safeguards against irrational or discriminatory use into sharp relief.”

He says the ethnic minority data should be published by PSNI as a matter of course (Para 9.87) and community background information should be requested and published:

Para 9.92

Statistical data from Northern Ireland would ideally capture the community background (Nationalist/ Loyalist/ neither) of those who are stopped under Schedule 7.

Recommendation 13

Jonathan Hall QC in his latest report raises some questions about the PSNI’s use of the TACT powers at ports (Schedule 7) and a need to look at the safeguards and training that is in place (Para 9.86). He also says the ethnic minority data should be published by PSNI as a matter of course (Para 9.87) and community background information should be requested and published (Para 9.92). The Policing Board recommends that the PSNI reviews these issues and reports to the Policing Board.

These issues are matters previously raised by the Board with PSNI and PSNI will be asked to respond to all of these observations in a further report to the Board. Jonathan Hall QC also reported on the Independent Custody Visitors system run by the Board and these will be discussed with him in more detail and feature in the next Human Rights Annual Report.

CHAPTER 9 - PSNI HUMAN RIGHTS AWARENESS

“The culture and ethos of an organisation include both the way in which it sees itself and manages itself internally and the way in which it sees and interacts with its clients and others outside the organisation. The promotion of human rights awareness of PSNI officers at all levels is vital not only to facilitate the development of a tangible human rights culture within the PSNI but also to demonstrate the PSNI’s commitment to the human rights agenda in its dealings with others external to it.”¹⁶²

Human Rights culture in the police service cannot be separated from general cultural drivers. The kinds of factors that drive cultural change include:

- Constitutional and Structural change; The main cultural change in adopting human rights principles was probably driven by the Good Friday Agreement, the Patten Report, the Human Rights Act, the Northern Ireland Human Rights Commission, the creation of the new PSNI with human rights at its heart, the Code of Ethics and the Board’s statutory duty (and the role of previous Human Rights Advisors), the OPONI, and the other review mechanisms (Justice and Security Act, Terrorism Legislation), etc.¹⁶³;
- Leadership; real integration of human rights principles and not just lip service), where it is obvious that more junior officers observing senior officers making human rights based decision making;
- Training; integration of the principles into practical training rather than after the event justification; and
- Independent and effective investigations and imposition of transparent sanctions (including criminal sanctions where appropriate)¹⁶⁴.

Dr Richard Martin recently conducted a large research report on the PSNI which explored how officers of varying ranks understand, interpret and apply human rights

¹⁶² Page 144, Human Rights Report for 2005, Keir Starmer QC and Jane Gordon.

¹⁶³ *A Culture of Human Rights: Transforming Policing in Northern Ireland*, Michele Lamb, 2008, Essex University.

¹⁶⁴ See, for instance, *Does Torture Prevention Work?* Richard Carver and Lisa Handley, 2016, Liverpool University Press.

in their daily work.¹⁶⁵ He describes in generally positive terms the training that officers received in public order, but also the relationship with key people within the PSNI:

“Crucially, Commanders would benefit from the human rights expertise of what one Silver Commander referred to as the PSNI’s ‘bridgers’ – those with knowledge and expertise of both human rights law and police practice, who were able, therefore, to bridge the two. The most significant bridger is the PSNI’s human rights lawyer who acts as the authoritative voice of translation of human rights law within the PSNI. Legal departments are a crucial source of knowledge and a conduit for informing officers of updates in case law and legislation.”

“Commanders have made a determined effort to write human rights standards into the police ‘script’ to manage contentious parades and protests. In its material form, the script was the strategic and operational plans devised by Commanders, the content of which were an amalgamation of policies, law, information about the event and ‘community intelligence’. The Gold Commander’s strategy document, devised months in advance of major protests and parades, sits at the apex of public order operations.”

“The strategic deployment of ECHR verbiage was a technique used by Commanders to manage ‘trouble’ emanating from their intensely-scrutinised working environment; it was deemed prudent to ‘copper fasten’ decisions in case legal challenges arose, but as revealed in the analysis above and evidenced by the Board’s advisers’ own reports, it would be inaccurate to cast Commanders’ engagement with the ECHR as amounting to no more than ‘formulaic incantations’. Commanders used human rights to reason their way to a decision, not merely rationalise it to appeal to oversight bodies. Given what is at stake for protestors, residents, business owners and police officers themselves, PSNI Commanders – equipped with bespoke training and legal

¹⁶⁵ See A ‘Culture of Justification’? Police Interpretation and Application of the Human Rights Act 1998, in *The Frontiers of Public Law*, J.Varubas and S.Stark (eds.) Hart, 2020 and *Ethno-Political Tenors of Human Rights: The Case of the Northern Irish Policing Board*, *Modern Law Review*, 2019, Vol 83, Issue 1.

advice – saw the Convention principles and standards as offering a practical guide that made such difficult decisions more, not less, manageable.”

“The empirical findings in this paper demonstrate that the technical grasp of the Convention that seasoned Commanders became familiar with through their training, legal advice and operational experience did not, in fact, produce either a thoughtless ‘tick-box’ exercise or excessive judicialisation of decision-making. Commanders were mindful of the need to give rationales for each decision made and considered the application of the Convention in devising and conducting operations to be an effective means of managing ‘trouble’, especially from oversight bodies. Most positively, Commanders were highly conscious of the ramifications their decisions had for the rights of parties involved, and the need to address whether specific operational plans and tactical options would likely comply with more specific Convention standards.

However there are some caveats. The current Human Rights Advisor has detected a slight overuse of the key principles from Article 2 by PSNI, perhaps slightly exaggerating the requirement to protect life as a justification to take no action (whether or not the non-intervention might not be justified for other important reasons). This position was exposed in more controversial circumstances by a resident of the Short Strand and an un-notified protest who was finally successful in the Supreme Court in 2017.¹⁶⁶ Dr Martin found:

“This rights-inspired planning and management of public order events was, however, animated by a sub-culture that was wary of the community fallout from heavy police intervention in politically sensitive demonstrations and protests. Where such intervention might lead to potentially lethal tactics being used or even those deemed ‘heavy-handed’ by some communities, Commanders seemed to find Article 2 a useful basis for justifying their less interventionist approach, albeit – as the High Court held – this can be deleterious consequences for the rights of nearby residents affected by sustained protests.”

¹⁶⁶ Re DB v Chief Constable of Northern Ireland [2017] UKSC.

Data on Attitudes

In 2005 the Human Rights Advisors devised a human rights questionnaire, which was sent to all PSNI officers, including full-time and part-time reserves, to gauge basic human rights knowledge and to give some indication across the service of the extent to which a human rights culture existed. In addition, they set up a number of focus groups in which PSNI officers from different ranks participated in discussions about human rights.¹⁶⁷ It may be time to undertake such a survey again to assess progress and where more work is needed.

¹⁶⁷ The full Report is set out in Appendix 5 to the 2005 Human Rights Annual Report.

CHAPTER 10 - PRIVACY, DATA PROTECTION & FREEDOM OF INFORMATION

A failure to handle personal data correctly constitutes misconduct and, in the case of police officers, a breach of Article 3 of the PSNI Code of Ethics. All police officers and members of the police civilian staff must comply with the Data Protection and Freedom of Information Acts. These acts create a number of criminal offences for the mishandling of personal data and protect an individual's right to request information held by public authorities. Inappropriate handling of information could also impact upon an individual's Convention Rights, in particular the right to respect for their private and family life, their home and their correspondence¹⁶⁸, and has the capacity to seriously damage public confidence in the police. PSNI compliance with this legislation is reported upon annually in the Human Rights Annual Report.

On the 25th May 2018, the General Data Protection Regulation ('GDPR') and the Data Protection Act 2018 (DPA) came into effect in the United Kingdom. GDPR is a European Regulation which is directly effective and covers the general processing of personal data. The DPA covers those areas of data protection outside of EU competence which are covered in the GDPR including law enforcement. Where PSNI is processing information for their law enforcement purposes PSNI must comply with Part 3 of the Data Protection Act, personal data processed for all other purposes will be done so in line with GDPR. The Chief Constable of the Police Service of Northern Ireland is registered with the Information Commissioner as a 'Data Controller' for the purposes of this legislation. As such he is obliged to ensure that the Police Service of Northern Ireland handles all personal data in accordance with the legislation.

Significant review has taken place of the PSNI's policies and guidance in relation to compliance with new data protection legislation. In August 2019 PSNI wrote to the Board to advise that Internal Audit has completed a review of their policies and procedures and provided an overall audit opinion rated 'Green-Satisfactory' assurance

¹⁶⁸ There can be no interference by a public authority with the exercise of that right except such as in accordance with the law and is necessary in a democratic society: in the interests of national security; in the interests of public safety; in the interests of the economic well-being of the country; for the prevention of disorder or crime; for the protection of health or morals; or for the protection of the rights and freedoms of others.

rating. All police officers and police staff are required to undergo mandatory Data Protection training which was update and relaunched to highlight changes to the legislation. Follow-up training is to be delivered every three years thereafter. In May 2018 two new corporate policy instructions were issued to define the renewed responsibilities placed on officers regarding Data Protection (SI0518) and Freedom of Information (SI0318).¹⁶⁹ These provide a detailed overview of PSNI's procedures in respect of the use and disclosure of a 'data subjects' personal data. They also provide clear guidance on an individual's rights regarding data protection and freedom of information.

Article 15 of GDPR and Section 45 of the Act provides a right for data subjects to have access to their personal data, unless an exemption applies. Therefore, individuals can make a 'Subject Access Request' (SAR) to PSNI in writing, preferably by completing the PSNI subject access form (DAT1) available on their website. The PSNI do not charge for processing SARs and have a one calendar month legislative timeframe to either supply the requester with their personal data or provide an explanation will be provided to account for any information which may have been withheld under certain exceptions.

In addition to the right of access, for personal data being processed under the law enforcement provisions, the following rights are applicable to individuals in certain circumstances under the new legislation:

- Right to rectification
- Right to erasure
- Right to restriction
- Right to data portability
- Right to object

¹⁶⁹ <https://www.psnipolice.uk/globalassets/advice--information/our-publications/policies-and-service-procedures/data-protection-110219a.pdf>
<https://www.psnipolice.uk/globalassets/advice--information/our-publications/policies-and-service-procedures/freedom-of-information-021019.pdf>

- Right not to be subject to automated processing.

Further information on PSNI's procedure for processing an individual subject access request or a request for individual rights to be reviewed (including rectification, erasure and objection) is set out in detail in Annexes B and C of the Data Protection Service Instruction. There is no requirement for the PSNI to review a decision made regarding what has been supplied in response to a request. However, if the requestor is dissatisfied, they have a right of recourse to the Information Commissioner's Office (ICO). Regulation 115 of the Data Protection legislation sets out the function of the ICO. It has a range of powers which allow it to investigate a public authority's handling of personal data and if the PSNI are found to be in breach of the legislation, the ICO have a number of enforcement powers they can engage.

The PSNI also have clear policies and procedures in place setting out the information security standards required of all officers, staff and contractors. These are set out in Service Instruction SI0516 'Information Security' and underpinned by specific security standards; this includes the requirement to report information incidents in line with those standards. As per the Service Instruction, an information incident is defined as an event that has compromised or has the potential to compromise the confidentiality, integrity and/or availability of any PSNI information asset. Where this involves personal data, there are additional obligations on PSNI to report serious breaches within 72 hours to the ICO and potentially to individuals affected by the breach.

The Freedom of Information Act 2000 provides individuals with two basic rights: to be informed in writing by a public authority whether it holds the information requested (unless to do so would itself release exempt information); and to have that information communicated to the person making the request (unless an exemption applies). As above, where an individual does not believe that a Freedom of Information (FOI) request has been dealt with appropriately, or where they have other concerns regarding an organisation's information rights practices, they may complain to the organisation itself and/or to the Information Commissioner's Office (ICO).

Between 1 April 2018 and 31 March 2019, PSNI received and processed 1,591 subject access requests under the Data Protection Act 1998 and 5,539 requests made from

1,483 individuals under the Freedom of Information Act 2000. Between 1 April 2019 and 31 March 2020 PSNI received and processed 1,815 subject access requests under the Data Protection Act 2018, and 1,460 requests from 4,991 individuals under the Freedom of Information Act. Since the enactment of the DPA in May 2018, the PSNI have received 63 requests in relation to individuals' right to rectification, erasure or restriction of their personal data.

In 2018/19 PSNI were contacted by the ICO in relation to 32 complaints made under Section 50 of the FOIA and 15 requests for assessments made under Data Protection legislation. PSNI advised that, due to a backlog, the majority of the requests assessed by the Information Commissioner's Office related to breaches of timescales within the legislation. Therefore, they met with the ICO and agreed a formal plan of action which included securing additional resource for the Corporate Information Branch to handle requests. PSNI report that there has been continuous communication and liaison with the ICO throughout 2019/20 in relation to this work and they have begun to see reductions during this period. In 2019/20, the ICO contacted the PSNI in respect of 21 complaints made under Section 50 of the FOIA and 13 complaints made under Section 51 of the DPA. Of the 21 FOIA complaints, 17 related to investigations for PSNI breaching legislative timeframes in responding to requesters. Of the 13 complaints received under Section 51 of the DPA 2018, 10 related to complaints by requesters in relation to subject access requests (5 of which were in relation to a breach of legislative timeframes in responding).

PSNI have provided assurance that, due to backlog reduction measures, the FOI backlogs are greatly reduced and work is now focusing on the continued reduction of the Data Protection and subject access request backlog. Finally, the PSNI reported 16 notifications to the ICO in respect of potential breaches of security made under section 67 of the DPA 2018. These primarily related to losses of police notebooks, issues with delivery of a summons to an incorrect address and inaccurate information being inputted onto PSNI's main computer system, NICHE.

CHAPTER 11 - CHILDREN & YOUNG PEOPLE

In monitoring the PSNI's performance in complying with the Human Rights Act 1998, the Board considers the way in which police interact with children and young people and protects their rights. It is recognised that children and young people have the same rights as adults but they also have additional rights as a result of their vulnerability. Therefore due consideration should be given to the United Nations Convention on the Rights of the Child (UNCRC) and in particular, the following core principles; all children have the right to life; the best interests of the child should be paramount; the State has a duty to protect children from all forms of violence; children have a right not to be discriminated against; and children have a right to have their opinions taken into account in matters concerning them and a right to freedom of expression. The impact of stop and search on children and young people is also discussed in Chapter 3.

To assist the Committee in carrying out this function, it receives a range of statistical information which is broken down according to age profiles, including the age of persons against whom various types of force is used, the age of persons against whom stop and search powers are used, the age of people who have made complaints to OPONI and the age of victims of crime.

Over the last 20 years the number of reported crimes against children has increased. Furthermore the types of crimes children are victims of are becoming more harmful. For example over 25% of crimes against children in 2019/20 were sexual offences, compared to only 9.8% in 2001/02. There has also been a steady increase in reporting of rape, sexual grooming and other sexual offences involving children over the last three years.

As part of monitoring police performance, the Board's Police Performance Monitoring Framework carried forward measures in the Policing Plan 2019/20 for PSNI to achieve the Strategic Outcome of 'increasing trust and confidence in policing in Northern Ireland'. These measures were: to demonstrate an effective contribution to protecting young people by implementing initiatives and interventions to improve outcomes in collaboration with partners in relation to child sexual exploitation and abuse and children who go missing; to increase young people's confidence in policing in areas

where it has been identified as being lower; and to improve service to the most vulnerable (including young people) across policing districts through the implementation of Support Hubs in collaboration with PCSPs and other partners.

Child Sexual Abuse and Exploitation

The issue of child sexual abuse and exploitation has previously been considered by the Performance Committee in monitoring PSNI progress in advancing Operation Owl¹⁷⁰ and their response to the Marshall inquiry published in 2014. This has continued during 2019/20 as the Policing Plan 2019/20 highlights the close linkages between 'children who go missing' and those children at most risk of becoming victim to Child Sexual Abuse and Exploitation (CSAE). In an unpublished review of CSAE by the Board's previous Human Rights Advisor, a number of recommendations were made for the PSNI, who have subsequently provided the Committee with a comprehensive briefing on their work in this area and an assessment of their response to each of the recommendations. The recommendations contained in that draft review are captured in PSNI's CSAE Strategic Action Plan which PSNI has developed.

With regards to the risk assessment related to CSAE, PSNI informed the Committee that young people who may be at high risk of CSAE are identified in a number of ways, including internal colleagues who share details of children they have concerns about with the Public Protection Branch (PPB) who may send a referral to the Social Services CSAE lead requesting a joint CSAE risk assessment resulting in an action plan to mitigate the risk to young person, which is reviewed every eight weeks. PSNI advise that work is currently progressing with key partners and academics to develop and review a more robust current risk assessment tool which aims to be finalised in 2020. The Committee has requested this as a matter of urgency. The issue of CSAE is considered in more detail in Chapter 8 on Victims.

¹⁷⁰ In September 2013 the PSNI announced that it had begun a major investigation into the sexual exploitation of children and young people who have gone missing in care in Northern Ireland. The investigation identified 22 young people ages between 13-18 who had gone missing a total of 437 times from care homes in the preceding 18 months and may be at risk of further abuse.

One key development within the reporting period has been the bespoke ‘Youth Champions Forum¹⁷¹ (YCF) Report’ which aims to improve transparency and dialogue over PSNI statistics and information in relation to children and young people. This bi-annual report is provided to the YCF as a guide for practitioners; it does not represent official figures and therefore cannot be quoted as such. In 2019/20, YCF Members requested analysis around missing children, children in detention and improved stop and search reporting. Other sections include victims and witnesses, use of force and the use of Community Resolution Notices (CRNs). It provides assurance by giving further insight into operational figures by supplementing data with contextual narrative where possible.

Stop and Search

The impact that stop and search can have upon young people’s confidence in the police is a concern that is regularly cited by the Board and its stakeholders. In May 2019 the Committee published a Review they undertook assessing PSNI’s Use of the Stop and Search Powers¹⁷².

In response to the consultation on the Board’s draft Policing Plan 2017/18, the Children’s Law Centre and Include Youth both separately advised that young people consistently raise the issue of stop and search, as they feel targeted and victimised as a result of these powers. Include Youth stated, ‘[young people] also report inconsistent experience of officers’ communication when it comes to providing a rationale for the ‘stop and search’ and their rights within that process’, a view corroborated by Dr John Topping in his report in partnership with the Young Life and Times Survey (2017)¹⁷³. In response to the Local Policing Review undertaken by PSNI and the Board in 2018, the Community Relations Council note the impact that stop and search is having on relationships between young people and PSNI.

In June 2018, the Northern Ireland Commissioner for Children and Young People (NICCY) published a ‘Statement on Children’s Rights in Northern Ireland’, informed by

¹⁷¹ Youth Champions Forum members include: VOYPIC, Start360, Children’s Law Centre, NICCY, Include Youth, Education Authority, Youth Work Alliance, Health and Social Care, Action for Children, PSNI and NI Policing Board.

¹⁷² <https://www.nipolicingboard.org.uk/publication/committee-review-use-stop-and-search-powers>

¹⁷³ <https://www.ark.ac.uk/yjt/2017/index.html>

the UN Committee's Concluding Observations following their fifth periodic examination, making the recommendation that '*PSNI must demonstrate the purpose and outcomes of all Stop and Search operations involving children and young people, and must also improve the quality of engagement with young people.*'

During the development of the Committee's Review in May 2019, PSNI advised that an internal policy on stop and search is being developed which will contain a section on the use of the power in relation to children and young people. This is still in development following engagement with the Human Rights Advisor. The Board are seeking this as a matter of urgency.

During the Committee Review, the Committee considered findings from Dr John Topping, supporting further investigation into the oversight directed at PSNI's use of the powers contained in PACE and the Misuse of Drugs Act 1971.¹⁷⁴ This is a concern that the Committee will be dedicating further consideration to.

Stop and searches of young people under counter-terrorism and security powers are less frequent,¹⁷⁵ but nonetheless concerns in relation to young people have repeatedly been raised by the current Independent Reviewer of JSA, Mr David Seymour. For instance, in his tenth report covering August 2016 to July 2017, Mr Seymour recommended that an internal record be kept of any stop and search under the JSA or TACT involving children. PSNI concluded that it was not feasible to accept this recommendation, as these powers are "without reasonable suspicion" powers and police officers should not be required to articulate reasons why a particular person should be stopped and searched. In response to this, Mr Seymour noted in his eleventh report (August 2017 - July 2018), while PSNI at the time, did not accept his previous recommendation; that if they could demonstrate '*that there was effective supervision and a service wide strategy in relation to the use of these exceptional powers that would be a significant additional safeguard*'.¹⁷⁶ During the Committee's

¹⁷⁴ John Topping and Dirk Schubotz, *The 'usual suspects'? Young people's experiences of police stop and search powers in Northern Ireland*, ARK research update, May 2018

¹⁷⁵ Between 1 August 2017 to 31st July 2018 Mr Seymour reported 247 children were stopped and searched under sections 21 and 24 of JSA, representing 3.4% of the total stopped (no child was stopped under TACT). The eleventh Annual Report of the Independent Reviewer of Justice and Security (Northern Ireland) Act 2007 from 1st August 2017 – 31st July 2018, Northern Ireland Office, 15 March 2019, <https://www.gov.uk/government/publications/11th-annual-report-of-independent-reviewer-of-justice-security>

¹⁷⁶ Ibid. p24

Stop and Search Review, PSNI has confirmed that a record has been kept of all cases involving the use of JSA and TACT powers involving children.

Between 1 April 2019 to 31 March 2020 PSNI recorded that 25,450 persons were stopped and searched/questioned; 13% (3,211 persons) of all stops were on persons aged 17 and under (the same percentage as the previous 12 month period). Of those 3,211 persons, 70% stopped and searched were under the Misuse of Drugs Act (including a combination of Misuse of Drugs Act and other powers). During the reporting period 197 children (aged 17 and under) were stopped and searched/questioned under sections 21 and 24 of JSA, representing 6.1% of the total stopped, comparing to 247 the previous reporting period (3.4% of 2018/19 total). One young person aged between 13 and 17 was stopped and searched/ questioned under TACT.

Young People's Confidence

Confidence in policing has long been of interest and concern for the Board and specifically the importance of young people having confidence in policing. A human rights based approach to policing has been shown to enhance public confidence and integrate the police into the community. With the cooperation and knowledge of the community which it serves, the police are better equipped to protect the rights of all members of society, including the most vulnerable¹⁷⁷. As previously mentioned, the Policing Plan 2019/20 had two measures to assess PSNI's performance in this area; to increase young people's confidence in policing in areas where it has been identified as being lower; and to improve the service to the most vulnerable (including young people) across policing districts through the implementation of Support Hubs in collaboration with PCSPs and other partners.

To increase young people's confidence PSNI have implemented a range of measures, one such example is the Youth Volunteer Academy (YVA) programme, which is a partnership programme in place since 2016 between PSNI and the Northern Ireland Ambulance Service, aimed at young people aged 14-17. The programme was designed to strengthen the relationship between police and the ambulance service

¹⁷⁷ Northern Ireland Policing Board Human Rights Annual Report 2016/17
<https://www.nipolicingboard.org.uk/sites/nipb/files/publications/human-rights-annual-report201617.PDF>

and young people, to break down barriers and promote positive role models. The scheme appears to have increasingly taken on a diversionary ethos in putting together a programme of activities and learning for young people 'at risk', who may have had negative perceptions or experiences of the police. It proved effective in engaging 'hard to reach' young people, introducing them to positive policing. Following an evaluation in 2019, a further five YVA programmes were launched, four of those in areas deemed to be at high risk of paramilitary influence and the fifth location in Newry, Mourne and Down to address the on-going issues of anti-social behaviour in the local area. The programme continues to evolve, with the latest launch demonstrating collaboration with Northern Ireland Fire and Rescue Services who saw the value in the programme.

The PSNI aim to improve the service it provides to those who are most vulnerable and the implementation and roll-out of the Support Hubs has contributed to this effort. Problem Solving Justice is a new approach in Northern Ireland aimed at tackling the root causes of offending behaviour and reducing harmful behaviour within families and the community. Support Hubs are one of seven "Problem Solving Justice" initiatives being supported by the DOJ. In December 2019, Support Hubs were operational in ten District Council areas. The DOJ are currently collecting data through each PCSP to provide a full evaluation of the concept. The results of this and any recommendations should be available during 2020. This review will provide evidence the effective of partnership working, reduction in demand and the reduction in vulnerability by more timely interventions to prevent individuals getting to crisis point.

The Committee is also pleased to note the development of PSNI's Children and Young People Strategy, from which PSNI will be able to develop an action plan to deliver the commitments contained within the document. It aims to further improve the quality of the PSNI's interactions with children and young people. The Strategy identifies the following key themes: Engagement; Safety and Protection; Suspected Offending; Victims and witnesses; and Stop and Search. The Strategy was created and developed collaboratively across PSNI departments and the PSNI Youth Champions Forum and direct consultation with young people via the Northern Ireland Youth Forum. It is envisaged that a Regional Youth IAG and 11 local IAGs will be established in the coming reporting year.

Recommendation 14

In the previous Human Rights Annual Report 2016/17, the following recommendation was made:

“PSNI should analyse its use in 2016/17 of police detention for children. That analysis should consider a random sample of cases (not less than 20%) in which children were detained. The analysis should include in particular whether alternative options were considered. If alternatives were considered but unavailable the PSNI should identify the reason(s). PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report.”

This recommendation was not completed because the PSNI did not have the capability to carry this out. However, the PSNI is part of a wider working group which has been considering alternatives to detention. The PSNI should report to the Board on the outcomes from this work and its actions following any recommendations.

APPENDIX 1

IMPLEMENTATION OF RECOMMENDATIONS FROM 2016/17

Recommendation 1

The PSNI Human Rights Training Advisor (HRTA) should assess the capacity of police trainers to deliver the renewed training programme with an emphasis on human rights and policing with the community. That assessment should include a consideration of whether trainers themselves are sufficiently knowledgeable about their subject, skilled in the delivery of training and given enough time to engage with students during lessons. Thereafter, that assessment should be included in the PSNI's sequence of briefings to the Policing Board on the implementation of the Police Scotland recommendations.

Status: Implemented

Recommendation 2

The PSNI should consider whether its engagement with older people is effective and, assuming that more could be done, its strategy for engagement with the objective of enhancing the protection of older vulnerable people. The PSNI should report to the Performance Committee within 6 months of the publication of this annual report with its analysis.

Status: Implemented

Recommendation 3

PSNI should analyse its use in 2016/17 of police detention for children. That analysis should consider a random sample of cases (not less than 20%) in which children were detained. The analysis should include in particular whether alternative options were considered. If alternatives were considered but unavailable the PSNI should identify the reason(s). PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report.

Status: Outstanding

Recommendation 4

In the event that the PSNI considers introducing spit guards or guards for use by officers it should first report to the Committee outlining the need, the capability gap to be filled, whether there is potential for death or injury; a tactical and medical needs assessment; and an equality impact assessment.

Status: Outstanding

Recommendation 5

In the event that the PSNI intends to issue spit guards or guards to officers it should report to the Committee on the policy guidance in place; training developed (for all officers and civilian detention officers); the monitoring framework for the use of guards; and, the commitment to report the use of guards to the Policing Board by the electronic use of force monitoring form.

Status: Outstanding

Recommendation 6

PSNI should include an age breakdown of the victims of paramilitary style shootings and assaults within its year end statistical report.

Status: Implemented

IMPLEMENTATION OF RECOMMENDATIONS FROM 2015

Recommendation 2

The PSNI should complete its Working Together project on case file preparation and implement the recommendations and findings contained within the Criminal Justice Inspection Northern Ireland Report within 9 months of the publication of this Human Rights Annual Report. Thereafter, the PSNI should provide to the Performance Committee a written briefing on the outcomes of the project and on the steps taken or to be taken. That written briefing should be provided within 12 months of the publication of this Human Rights Annual Report.

Status: Implemented

Recommendation 3

In the likely event that the PSNI will obtain the power to issue Domestic Violence Protection Notices (DVPNs) and apply for Domestic Violence Protection Orders (DVPOs) within the next 12 months it should provide to the Committee its draft written policy and guidance on the use of the powers and the proposed training plan for officers. In any event, training must be delivered prior to the introduction of the powers.

Status: Outstanding

Recommendation 9

The PSNI should forthwith and for a period of 12 months disaggregate further the statistics on outcome rates for domestic motivated crime according to each disposal type including conviction in a form which can be easily accessed and understood. The PSNI should at the end of the 12 months period report to the Performance Committee with the empirical evidence distilled from the statistics.

Status: Implemented

APPENDIX 2

IMPLEMENTATION OF RECOMMENDATIONS FROM THEMATIC REVIEW (2017) ON POLICING RACE HATE CRIME

Recommendation 1

The PSNI should work with the DoJ to consider a 'case flow through system' mechanism for tracking hate crime prosecutions.

Status: Discharged - Objective achieved by other means (see page 116)

Recommendation 2

The PSNI should consider how it engages with the Northern Ireland Housing Executive to enable early intervention on behalf of victims of hate crime for whom the advice is to move from the home. Thereafter, the PSNI should report to the Performance Committee within 6 months of the publication of this thematic review.

Status: Implemented

Recommendation 3

The PSNI should review the understanding of officers with regard to the perception test for hate incidents and crimes. Thereafter, the PSNI should take all necessary steps to ensure that officers accept without question the perception of the victim or any other relevant person that the incident or crime was aggravated by hostility.

Status: Implemented

Recommendation 4

The PSNI should include within Service Procedure 01/16 an obligation on relevant officers to contact victims of hate crime regularly and in any event on the happening of prescribed events so as to ensure compliance with the EU Victims' Directive and Northern Ireland Victim Charter.

Status: Implemented

Recommendation 5

While addressing the technology gap identified by HMIC in the data capture of risk assessment forms for domestic abuse the PSNI should include risk assessment forms for hate crime.

Status: Discharged- Objective achieved by other means (see page 118)

Recommendation 6

As part of the Working Together the PSNI should include the recording and flagging of hate crime on case files.

Status: Implemented

Recommendation 7

In PSNI Service Procedure 01/16 and thereafter in all training delivered on hate crime the range of special measures available for vulnerable and intimidated victims of and witnesses to hate crime should be explained. The importance of early identification of appropriate measures, which should be communicated to the PPS at the earliest opportunity, should be emphasised.

Status: Implemented

Recommendation 8

As soon as practically possible the PSNI should ensure that officers receive training in the use of Community Resolution for hate crimes.

Status: Implemented

Recommendation 9

The PSNI should analyse hate incidents and crimes recorded over the period 1 April 2016 to 31 March 2017 to identify any trends and patterns emerging of perpetrators and thereafter consider whether its strategy of communication and prevention is sufficiently targeted.

Status: Implemented

Recommendation 10

The PSNI should explore with partners how to better engage with victims and potential victims of hate crime so that they are better informed of the services they are entitled to receive from the police and other agencies. The Policing Board can facilitate those discussions but in any event the PSNI should report to the Performance Committee within 12 months of the publication of this thematic review on the outcome of those discussions.

Status: Implemented

Recommendation 11

The PSNI should develop and maintain a problem profile for hate crime across Northern Ireland which should be reviewed and monitored within local areas by local Commanders. That problem profile should include key dates and events which may indicate the potential for signal incidents and should be developed in partnership with local communities.

Status: Implemented

Recommendation 12

Face to face hate crime training should be developed with partners, which enables in-depth consideration of the many complex issues surrounding hate crime and permits exploration and debate.

Status: Implemented

Recommendation 13

The PSNI should review the hate crime training delivered in 2016 and assess the effectiveness of that training including whether the lessons were delivered to the right officers in sufficient detail. The PSNI should satisfy itself that the training had delivered the outcomes intended and thereafter report to the Performance Committee on its findings.

Status: Implemented

Recommendation 14

Hate crime training should continue including specific cultural diversity training but that training should be refreshed with the assistance of external experts to address cultural sensitivities and should include racism awareness.

Status: Implemented

**IMPLEMENTATION OF RECOMMENDATIONS FROM THEMATIC REVIEW (2013)
ON THE USE OF POLICE POWERS TO STOP AND SEARCH/ QUESTION UNDER
TERRORISM ACT 2000 AND JUSTICE AND
SECURITY (NI) ACT 2007**

Recommendation 7

The PSNI should as soon as reasonably practicable but in any event within 3 months of the publication of this thematic review consider how to include within its recording form the community background of all persons stopped and searched under sections 43, 43A or 47A TACT and all persons stopped and searched or questioned under section 21 and 24 JSA. As soon as that has been completed the PSNI should present to the Performance Committee, for discussion, its proposal for monitoring community background. At the conclusion of the first 12 months of recording community background, the statistics should be analysed. Within 3 months of that analysis the PSNI should present its analysis of the statistics to the Performance Committee and thereafter publish the statistics in its statistical reports.

Status: Outstanding (see page 61)

APPENDIX 3 - GLOSSARY

ABE	Achieving Best Evidence
ACC	Assistant Chief Constable
ACE	Adverse Childhood Experience
AEP	Attenuating Energy Projectile
AG	Attorney General
ASB	Anti-Social Behaviour
BAME	Black, Asian, and Minority Ethnic
BWV	Body Worn Video
CAJ	Committee on Administration of Justice
CCC	Cybercrime Centre
CED	Conductive Energy Device
CHIS	Covert Human Intelligence Sources
CJINI	Criminal Justice Inspection NI
CMC	Contact Management Centre
COP	College of Policing
COPNI	Commissioner for Older People for Northern Ireland
COT	Combined Operational Training
CPS	Crime Prosecution Service
CRJ	Community Restorative Justice
CRN	Community Resolution Notices
CSAE	Child Sexual Abuse and Exploitation
CRU	Central Referral Unit
DCC	Deputy Chief Constable
DoJ	Department of Justice
DASH	Domestic Abuse, Stalking and Harassment and Honour-based violence
DPA	Data Protection Act
DPCSPs	District Policing and Community Safety Partnerships
DV	Developed Vetting
DVADS	Domestic Violence & Abuse Disclosure Scheme
DVPN	Domestic Violence Protection Notice
DVPO	Domestic Violence Protection Order
ECHR	European Convention on Human Rights

ECtHR	European Court of Human Rights
EU	European Union
FOI	Freedom of Information
GAP/NGAP	Guilty Anticipated Plea/Not Guilty Anticipated Plea
GDPR	General Data Protection Regulations
HET	Historical Enquiries Team
HIU	Historical Investigations Unit
HMIC	Her Majesty's Inspectorate of Constabulary
HMICFRS	Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services
HR	Human Resources
ICP	Indictable Cases Project
ICO	Information Commissioner's Office
ICV	Independent Custody Visitor
IDVA	Independent Domestic Violence Adviser
IPT	Investigatory Powers Tribunal
IRC	Independent Reporting Commission
IT	Information Technology
JATF	Joint Agency Task Force
JSA	Justice Security Act
KPI	Key Performance Indicators
LGBTQ+	Lesbian, Gay, Bisexual, Transgender, Queer (and Questioning)
LIB	Legacy Investigations Branch
LPC	Local Policing Consultation
MARAC	Multi-Agency Risk Assessment Centre
MDA	Misuse of Drugs Act
MI5	Security Service (Military Intelligence, Section 5)
MLA	Member of the Legislative Assembly
MSHT	Modern Slavery and Human Trafficking
MSHTU	Modern Slavery and Human Trafficking Unit
NCA	National Crime Agency
NDA	National Decision-making Model
NIA	Northern Ireland Assembly
NIAO	Northern Ireland Audit Office
NIAS	Northern Ireland Ambulance Service

NICCY	NI Commissioner for Children and Young People
NICS	Northern Ireland Civil Service
NICTS	Northern Ireland Courts & Tribunal Service
NILGA	Northern Ireland Local Government Association
NIO	Northern Ireland Office
NIPB	Northern Ireland Policing Board
NIPSA	Northern Ireland Public Services Alliance
NISRA	Northern Ireland Statistics and Research Agency
NPCC	National Police Chiefs Council
NPT	Neighbourhood Policing Team
NRM	National Referral Mechanism
NVCP	National Volunteer Cadets Programme
OBA	Outcome Based Accountability
OCG	Organised Crime Group
OCU	Organised Crime Unit
OCTF	Organised Crime Task Force
OHU	Occupational Health and Welfare
OPONI	Office of the Police Ombudsman Northern Ireland
OSC	Office of the Surveillance Commissioners
OSD	Operational Support Department
PACE	Police and Criminal Evidence Order
PAT	Police Appeals Tribunals
PBR	Priority Based Resourcing
PCSP	Policing and Community Safety Partnership
PCTF	Paramilitary Crime Taskforce
PDMS	Police Decision Makers
PEG	Policy Evaluation Group
PFNI	Police Federation of Northern Ireland
PPB	Public Protection Branch
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
PSMF	Professional Standards Monitoring Framework
PSP	Personal Safety Programme
PwC	Policing with the Community

QUB	Queen's University Belfast
RIPA	Regulation of Investigatory Powers Act
ROP	Reducing Offending in Partnership
ROU	Reducing Offending Unit
SBNI	Safeguarding Board Northern Ireland
SLA	Service Level Agreement
SMP	Selected Medical Practitioner
SMT	Senior Management Team
SOD	Structured Outline of Case
SOTP	Student Officer Training Programme
TACT	Terrorism Act
THRIVE	Threat Harm Risk Investigation Vulnerability Engagement
UNCRC	United Nations Convention on the Rights of the Child
UUJ	Ulster University at Jordanstown
YCF	Youth Champions Forum
YDO	Youth Diversion Order
YVA	Youth Volunteer Academy



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